4–22–04 Thursday
Vol. 69 No. 78 Apr. 22, 2004

Pages 21689–21940

Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV04–925–1 IFR]

Grapes Grown in a Designated Area of Southeastern California; Establishment of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes end-of-season reporting requirements authorized under the California grape marketing order (order). The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). Requiring handlers to file end-of-season grape shipment reports with the Committee will enable the Committee to obtain accurate shipment data for assessment billing and for the next season's marketing decisions without incurring the expense of auditing every handler. Handler costs also are expected to be reduced because the submission of end-of-season grape shipment reports will be less costly and less time consuming than yearly handler audits.

DATES: Effective April 23, 2004; comments received by June 21, 2004, will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by June 21, 2004.

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

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in California, hereinafter referred to as the "order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act.''

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

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

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

This rule establishes end-of-season reporting requirements authorized under the California grape order. Requiring handlers to file end-of-season grape shipment reports with the Committee will enable the Committee to obtain accurate shipment data for assessment billing and for the next season's marketing decisions without incurring the expense of auditing every handler each year. This action also is expected to reduce handler costs because submission of end-of-season grape shipment reports is expected to be less costly and less time consuming than yearly handler audits. This action is in the best interest of producers and handlers.

Section 925.41 of the grape order provides authority to assess each person who first handles grapes a pro rata share of the expenses which are reasonable and likely to be incurred by the Committee during a fiscal period.

Section 925.215 of the order's rules and regulations establishes an assessment rate of $0.015 per 18-pound lug for grapes grown in a designated area of southeastern California.

Section 925.60(b) of the grape order provides authority for establishing reporting requirements. Under the marketing order, the Committee may, with the approval of the Secretary, establish reporting requirements to collect necessary information or data. The Committee needs data on grape shipments to provide an accurate basis for handler assessments and for the next season's marketing decisions.

Currently, the Committee obtains data on grape shipments during handler audits at the end of the season. These

handler audits are time consuming and expensive for both the Committee staff and grape handlers. Detailed information follows on these burdens in the Initial Regulatory Flexibility Analysis section of this document.

Therefore, at its January 15, 2004, meeting the Committee unanimously recommended establishing § 925.160 under the order's rules and regulations and further clarified this recommendation at its February 5, 2004, meeting. Section 925.160 will read as follows: "Section 925.160 Reports. When requested by the California Desert Grape Administrative Committee, each shipper who ships grapes, shall furnish an end-of-season grape shipment report (CDGAC–3) to the Committee no later than 10 days after the last day of shipment for the season or such later time as the Committee deems appropriate. Such reports shall show the reporting period (the date of the handler's first shipment and the date of the handler's last shipment), the name and other identification of the shipper and grower, the invoice number, shipping date, varietal name, shipment destination (city and state or country), and the number of lugs shipped (pounds).''

The end-of-season grape shipment reporting requirements recommended by the Committee are similar to those required by the California Table Grape Commission (Commission) under a State of California program under which grape research and promotion activities are implemented. Because the Commission is prohibited from sharing confidential handler information, the Committee recommended that an end-of-season grape shipment report be developed for Committee use. Grape shipment data already compiled by handlers for the Commission may be attached to the Committee form to meet the new reporting requirements. Thus, handlers will not be duplicating their efforts and both agencies will receive necessary shipment data for respective program purposes.

The Committee estimates that this action will impact 20 handlers of grapes and further estimates that, on average, each handler will expend approximately 30 minutes per year to prepare and submit this report and accompanying information to the Committee. The Committee believes that this action will reduce handler costs, because the execution and submission of the end-of-season grape shipment report to the Committee is expected to be less costly and time consuming than yearly audits. The Committee vote was unanimous with 9 in favor, 0 opposed, and 0 abstained. This change does not impact the grape import regulation.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 20 handlers of California grapes who are subject to regulation under the order and about 50 producers of grapes in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. Eight of the 20 handlers subject to regulation have annual grape sales of at least $5,000,000. In addition, 10 of the 50 producers have annual sales of at least $750,000. Therefore, a majority of handlers and producers may be classified as small entities.

This rule establishes end-of-season reporting requirements authorized under the California grape order. Requiring handlers to file end-of-season grape shipment reports with the Committee will enable the Committee to obtain accurate shipment data for assessment billing and for the next season's marketing decisions without incurring the expense of auditing every handler each season. This action also is expected to reduce handler costs, because the preparation and submission of end-of-season grape shipment reports is expected to be less costly and less time consuming than yearly handler audits. This action is in the best interest of producers and handlers.

Section 925.41 of the grape order provides authority to assess each person who first handles grapes a pro rata share of the expenses which are reasonable and likely to be incurred by the Committee during a fiscal period.

Section 925.215 of the order's rules and regulations establishes an assessment rate of $0.015 per 18-pound lug for grapes grown in a designated area of southeastern California.

Section 925.60(b) of the grape order provides authority for establishing reporting requirements. Under the marketing order, the Committee may, with the approval of the Secretary, establish reporting requirements to collect necessary information or data. The Committee needs data on grape shipments to provide an accurate basis for handler assessments and for the next season's marketing decisions.

Currently, the Committee obtains data on grape shipments during handler audits at the end of the season. These handler audits are time consuming and expensive for both the Committee staff and grape handlers.

Therefore, at its January 15, 2004, meeting the Committee unanimously recommended establishing § 925.160 under the order's rules and regulations and further clarified this recommendation at its February 5, 2004, meeting. Section 925.160 will read as follows: "Section 925.160 Reports. When requested by the California Desert Grape Administrative Committee, each shipper who ships grapes, shall furnish an end-of-season grape shipment report (CDGAC–3) to the Committee no later than 10 days after the last day of shipment for the season or such later time as the Committee deems appropriate. Such reports shall show the reporting period (the date of the handler's first shipment and the date of the handler's last shipment), the name and other identification of the shipper and grower, the invoice number, shipping date, varietal name, shipment destination (city and state), and the number of lugs shipped (pounds).''

The end-of-season reporting requirements recommended by the Committee are similar to those now required by the California Table Grape Commission (Commission). The Commission administers a State of California research and promotion program for grapes produced in California. Because the Commission is prohibited from sharing confidential handler information, the Committee recommended that an end-of-season grape shipment report be developed for Committee use. Shipment data currently compiled by handlers for the Commission will be able to be attached to the newly developed Committee form to meet the Committee's shipment information needs. Thus, handlers will not be duplicating their efforts and both agencies will receive necessary shipment data for program activities. The Committee estimates that 20 grape handlers will be affected by this action with a total annual industry burden of

approximately 10 hours (20 handlers × 30 minutes = 10 hours).

The Committee believes that this action will reduce handler costs because the preparation and submission of the end-of-season grape shipment report to the Committee is expected to be less costly and time consuming than yearly audits. Currently, the 20 grape handlers regulated under the order pay approximately $5,283 and expend approximately 126 man-hours annually for the yearly audits. Approximately ⅓ of the handler audits will continue to be conducted by the Committee for order compliance purposes. Therefore, the Committee estimates that an annual savings of $3,698 and 88 man-hours for handlers will be realized through the use of the end-of-season shipment reports.

Additionally, this rule is expected to reduce the number of hours of Committee staff time and administrative costs currently incurred by the Committee in conducting handler audits. In conducting audits of all industry handlers, the Committee annually spends about $3,600 and about 300 man-hours. If only one-third of the handlers are audited each year, the Committee expects to save about $2,400 and about 200 hours of Committee time. Thus, actual Committee costs using the new shipment form should be about $1,200 and 100 man-hours.

The Committee discussed alternatives to this change, including requiring handlers to submit the end-of-season grape shipment report 5 days after the end of the season. The Committee rejected the 5-day requirement, as they believe handlers need at least 10 days to complete end-of-season handler activities. Additionally, the Committee considered not establishing an end-of-season grape shipment report, but concluded, as previously mentioned, that adding an end-of-season grape shipment reporting requirement will significantly reduce handler costs, as submission of this report will be less costly and less time consuming than yearly handler audits. The Committee vote was unanimous with 9 in favor, 0 opposed, and 0 abstained. This rule is in the interest of handlers and producers. These revisions do not impact the grape import regulation.

Further, the Committee's meetings were widely publicized throughout the grape industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the January 15, 2004, and February 5, 2004, meetings were public meetings and all entities, both large and small, were able to express their views on these issues.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

As previously mentioned, this rule will impose some additional reporting and recordkeeping on both small and large grape handlers. This action requires one new Committee form. The information collection requirements are discussed later in this document. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS has requested and obtained emergency approval from the Office of Management and Budget (OMB) for a new information collection request for Marketing Order No. 925, regulating the handling of grapes grown in a designated area of Southeastern California. This emergency approval was assigned OMB No. 0581–0220. The emergency request was necessary because insufficient time was available to follow normal clearance channels. Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581–0189 "Generic OMB Fruit Crops.''

Title: Grapes Grown in a Designated Area of Southeastern California; Marketing Order No. 925.

OMB Number: 0581–0220.

Type of Request: New collection.

Abstract: These information collection requirements are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California Desert Grape marketing order program, which has been operating since 1980.

On January 15, 2004, the Committee unanimously recommended the establishment of § 925.160 under the order's rules and regulations and further clarified this recommendation at its February 5, 2004, meeting. Section 925.160 will require handlers to furnish an end-of-season grape shipment report (CDGAC–3) to the Committee staff no later than 10 days after the last day of shipment for the season, or such later time, as the Committee deems appropriate. Any handler who ships grapes during the season will be required to report total shipments, and related information, to the Committee. The information requirements created by this action will be reported using one new Committee form, and by attaching shipment information required under the State of California research and promotion program to that form. The new reporting requirement will assist the Committee in obtaining accurate shipment data for assessment billing and for the next season's marketing decisions.

The information collected will be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized Committee employees. Authorized Committee employees are the primary users of the information and AMS is the secondary user.

The request for approval of the new information collection under the order is as follows:

End of Season Shipment Report, CDGAC Form No. 3

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Persons who ship California grapes from a designated area of Southeastern California.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

Comments: Comments are invited on: (1) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0220 and the Marketing Order for Grapes Grown in a Designated Area of Southeastern California and be sent to the USDA in care of the Docket Clerk at the previously mentioned address. All comments timely received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. As mentioned before, because there was insufficient time for a normal clearance procedure and prompt implementation was needed, AMS has obtained emergency approval from OMB for the use of this form for the 2004 regulation period, which began April 2004. Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581–0189 ''Generic OMB Fruit Crops.''

In summary, this rule establishes end-of-season reporting requirements authorized under the California grape order. Requiring handlers to file end-of-season grape shipment reports with the Committee will enable the Committee to obtain accurate shipment data for assessment billing and for the next season's marketing decisions without incurring the expense of auditing every handler. This action also is expected to reduce the handler costs, because the submission of end-of-season grape shipment reports should be less costly and less time consuming than yearly handler audits. Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action adds end-of-season grape shipment reporting requirements to facilitate handler and committee staff operations and to reduce costs; (2) the Committee unanimously recommended the end-of-season reporting requirement at a public meeting and interested parties had an opportunity to provide input; (3) California grape shipments are expected to begin approximately April 20, 2004, and this rule should be in effect as soon as possible; (4) this rule provides for a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 925.160 is added to Subpart—Rules and Regulations to read as follows:

§ 925.160 Reports.

When requested by the California Desert Grape Administrative Committee, each shipper who ships grapes, shall furnish an end-of-season grape shipment report (CDGAC–3) to the Committee no later than 10 days after the last day of shipment for the season or such later time the Committee deems appropriate. Such reports shall show the reporting period, the name and other identification of the shipper and grower, the invoice number, shipping date, varietal name, shipment destination (city and state), and the number of lugs shipped (pounds).

Dated: April 16, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–9097 Filed 4–21–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV04–981–1 FIR]

Almonds Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule, which decreased the assessment rate established for the Almond Board of California (Board) for the 2003–04 and subsequent crop years from $0.025 to $0.020 per pound of almonds received. The Board locally administers the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: May 24, 2004.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almond handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds

beginning August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to decrease the assessment rate established for the Board for the 2003–04 and subsequent crop years from $0.025 to $0.020 per pound of almonds received.

The California almond marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent crop years, the Board recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on May 15, 2003, and unanimously recommended 2003–04 expenditures of $20,358,304. In comparison, budgeted expenditures for 2002–2003 were $19,407,437. An assessment rate of $0.025 was established for the 1998–99 crop year and remained in effect through the 2002–2003 crop year.

The major expenditures recommended by the Board for the 2003–04 crop year include $6,375,312 for advertising and market research, $7,587,750 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agriculture Service (FAS), $1,500,000 for salaries and wages, $1,000,000 for nutrition research, $850,332 for production research, $823,948 for quality programs, $40,000 for econometric modeling and analysis, $254,903 for environmental programs, $200,000 for travel, $122,472 for office rent, $120,750 for a crop estimate, $159,836 for compliance audits and analysis, and $90,780 for an acreage survey.

Budgeted expenses for these items in 2002–03 were $6,125,312 for advertising and market research, $6,877,750 for public relations and other promotion and education programs including a MAP program administered by FAS, $1,760,000 for salaries and wages, $1,000,000 for nutrition research, $622,131 for production research, $472,964 for quality programs, $172,500 for econometric modeling and analysis, $230,550 for travel, $122,850 for office rent, $120,762 for a crop estimate, $125,000 for compliance audits and analysis, and $98,713 for acreage survey.

In September 2003, the Board recommended an increase in 2003–04 expenses due to an increased availability of funds from FAS. USDA approved an increased expenditure level of $20,547,385.

The Board met again on November 6, 2003, and recommended decreasing the assessment rate from $0.025 per pound to $0.020 per pound of almonds handled. Of the $0.020 per pound assessment, $0.01 per pound is available as credit-back for handlers who conduct their own promotional activities consistent with § 981.441 of the order's regulations and subject to Board approval. The Board recommended reducing the assessment rate because the 2002–03 financial audit revealed that the Board's financial reserve exceeded the amount authorized under § 981.81(c) of the order.

Section 981.81(c) authorizes a financial reserve of approximately one-half year's budgeted expenses. One-half of the 2003–04 crop year's budgeted expenses of $20,547,385 equals $10,273,692. The financial audit revealed a reserve of $12,681,596 at the end of the 2002–03 crop year, which is $2,407,904 more than the authorized reserve.

Section 981.81(b) of the order requires excess funds held in the financial reserve to be refunded to handlers or used to reduce the assessment rate in the subsequent crop year. The Board considered both options, and recommended the latter. By reducing the assessment rate and projected assessment revenue, the Board's estimated financial reserve at the end of the 2003–04 crop year will be $7,338,087, which is within the parameters authorized under the order.

The assessment rate recommended by the Board was derived by considering anticipated expenses and production levels of California almonds, and additional pertinent factors. In its recommendation, the Board utilized an estimate of 907,200,000 pounds of assessable almonds for the 2003–04 crop year. If realized, this will provide estimated assessment revenue of $9,072,000 from all handlers, and an additional $4,989,600 from those handlers who do not participate in the credit-back program, for a total of $14,061,600. In addition, it is anticipated that $13,678,872 will be provided by other sources, including interest income, MAP funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources will be adequate to cover budgeted expenses. Any unexpended funds from the 2003–04 crop year may be carried over to cover expenses during the succeeding crop year. As previously mentioned, funds in the reserve at the end of the 2003–04 crop year are estimated to be approximately $7,338,087, which is within the amount permitted by the order.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2003–04 budget and those for

subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 6,250 producers of almonds in the production area and approximately 119 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Data for the most recently completed crop year indicate that about 38 percent of the handlers shipped over $5,000,000 worth of almonds and about 62 percent of handlers shipped under $5,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service (CASS), and the total number of almond growers, the average annual grower revenue is estimated to be approximately $190,000. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule continues to decrease the assessment rate established for the Board and collected from handlers for the 2003–04 and subsequent crop years from $0.025 to $0.020 per pound of almonds. Of the $0.020 per pound assessment, $0.01 per pound is available as credit-back for handlers who conduct their own promotional activities consistent with § 981.441 of the order's regulations and subject to Board approval. The Board initially recommended, and USDA approved, 2003–04 expenditures of $20,358,304 and an unchanged assessment rate of $0.025 per pound in May 2003. In September 2003, the Board recommended an increase in 2003–04 expenses due to an increased availability of funds from FAS. USDA approved an increased expenditure level of $20,547,385.

On November 6, 2003, the Board subsequently recommended reducing the assessment rate to $0.020 per pound due to excess funds in the financial reserve. The 2002–03 crop year financial audit revealed that the Board's financial reserves exceeded the order's limitation of approximately one-half year's budgeted expenses, by $2,407,904. The assessment rate of $0.020 is $0.005 lower than the prior rate. The quantity of assessable almonds for the 2003–04 crop year is estimated at 907,200,000 pounds. Thus, the $0.020 assessment rate should provide $14,061,000 in assessment income and be adequate to meet this year's expenses, when combined with other revenues including financial reserves. The projected financial reserve at the end of 2003–04 is $7,338,087, which is within the parameters of the order.

The major expenditures recommended by the Board for the 2003–04 crop year include $6,375,312 for advertising and market research, $7,587,750 for public relations and other promotion and education programs including a MAP program administered by USDA's FAS, $1,500,000 for salaries and wages, $1,000,000 for nutrition research, $850,332 for production research, $823,948 for quality programs, $40,000 for econometric modeling and analysis, $254,903 for environmental programs, $200,000 for travel, $122,472 for office rent, $120,750 for a crop estimate, $159,836 for compliance audits and analysis, and $90,780 for an acreage survey.

Budgeted expenses for these items in 2002–03 were $6,125,312 for advertising and market research, $6,877,750 for public relations and other promotion and education programs including a MAP administered by FAS, $1,760,000 for salaries and wages, $1,000,000 for nutrition research, $622,131 for production research, $472,964 for quality programs, $172,500 for econometric modeling and analysis, $230,550 for travel, $122,850 for office rent, $120,762 for a crop estimate, $125,000 for compliance audits and analysis, and $98,713 for an acreage survey.

The Board considered two available alternatives to remedy the excess financial reserve situation as provided for in § 981.81(b) of the order: refund the excess funds to handlers, or reduce the assessment rate. After deliberating the issue, the Board recommended reducing the assessment rate.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2003–04 season could range between $1.50 and $1.80 per pound of almonds. Therefore, the estimated assessment revenue for the 2003–04 crop year (disregarding any amounts credited pursuant to §§ 981.41 and 981.441) as a percentage of total grower revenue could range between 1.1 and 1.3 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the California almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the November 6, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on January 8, 2004 (69 FR 1269). Copies of the rule were mailed or sent via facsimile to all almond handlers. Finally, a copy of the rule was made available through the Internet by USDA and the Office of the Federal Register. No comments were received in response to the interim final rule.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth,

will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Reporting and recordkeeping requirements.

PART 981—ALMONDS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 981, which was published at 69 FR 1269 on January 8, 2004, is adopted as a final rule without change.

Dated: April 19, 2004.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04–9135 Filed 4–21–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV04–989–1 IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2003–04 Crop Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final volume regulation percentages for 2003–04 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 70 percent free and 30 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: Effective April 23, 2004. The volume regulation percentages apply to acquisitions of NS raisins from the 2003–04 crop until the reserve raisins from that crop are disposed of under the marketing order. Comments received by June 21, 2004, will be considered prior to issuance of a final rule.

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

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for NS raisins for the 2003–04 crop year, which began August 1, 2003, and ends July 31, 2004. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule establishes final volume regulation percentages for 2003–04 crop NS raisins covered under the order. The volume regulation percentages are 70 percent free and 30 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended final percentages on February 12, 2004.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 14, 2003, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is

equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for NS raisins shall equal the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. For all other varietal types, the desirable carryout shall equal the total shipments of free tonnage during August, September and one-half of October for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three.

At its August 2003 meeting, the Committee computed and announced the 2003–04 trade demand for NS raisins at 210,933 tons. The August trade demand, however, did not account for Oleate Seedless raisins (Oleates). Beginning with the 2003–04 crop year, the NS varietal type was modified to include Oleates (68 FR 42943; July 21, 2003). Prior to that time, Oleate was a separate varietal type. The Oleate and NS trade demands were calculated separately. Then the two individual trade demand figures were added together to obtain a combined trade demand reflecting the new combined varietal type. The RAC establishes a 500-ton minimum trade demand for any varietal type for which the computed trade demand is zero or less. The computed trade demand for Oleates was less than zero, so the RAC established the trade demand for Oleates at 500 tons. At USDA's request, the RAC met on September 9, 2003, and recomputed the combined NS trade demand to account for Oleates at 211,493 tons (210,933 plus 500).

COMPUTED TRADE DEMANDS

[Natural condition tons]

	NS raisins
Prior year's shipments	297,176
Multiplied by 90 percent	0.90
Equals adjusted base	267,458
Minus carryin inventory	116,465
Plus desirable carryout	60,000
Equals computed NS trade demand	210,993
Plus Oleate minimum trade demand tons	500
Equals revised trade demand	211,493

Computation of Preliminary Volume Regulation Percentages

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date up to 5 business days if warranted by a late crop.

The Committee met on October 2, 2003, and announced a preliminary crop estimate for NS raisins of 276,931 tons, which is about 20 percent lower than the 10-year average of 348,419 tons. NS raisins are the major varietal type of California raisin. Adding the carryin inventory of 116,465 tons, plus the 276,931-ton crop estimate resulted in a total available supply of 393,396 tons, which was significantly higher (186 percent) than the 211,493-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for NS raisins, which released 85 percent of the computed trade demand since a minimum field price (price paid by handlers to producers for their free tonnage raisins) had been established. The preliminary percentages were 65 percent free and 35 percent reserve.

In addition, preliminary percentages were announced for Other Seedless raisins. It was ultimately determined that volume regulation was only warranted for NS raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), at its February 12, 2004, meeting, the Committee announced interim percentages for NS raisins to release slightly less than the full trade demand. Based on a revised NS crop estimate of 304,072 tons (up from the October estimate of 276,931 tons), interim percentages for NS raisins were announced at 69.75 percent free and 30.25 percent reserve.

Pursuant to § 989.54(d), the Committee also recommended final percentages at its February 2004 meeting to release the full trade demands for NS raisins. Final percentages were recommended at 70 percent free and 30 percent reserve. The Committee's calculations to arrive at final percentages for NS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS raisins
Trade demand	211,493
Divided by crop estimate	304,072
Equals free percentage	70
100 minus free percentage and equals reserve percentage	30

In addition, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal will be met for NS raisins by the establishment of final percentages, which release 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers.'' As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

For NS raisins, the first 10 plus 10 offer was held in February 2004. A total of 30,513 tons was made available to raisin handlers; all of the raisins were purchased. The second 10 plus 10 offer of 30,513 tons will be made available to handlers in April 2004. Adding the total figure of 61,026 tons of 10 plus 10 raisins to the 211,493 ton trade demand figure, plus 129,345 tons of 2002–03 carryin NS and Oleate inventory equates to 401,864 tons of natural condition raisins, or 377,084 tons of packed raisins, that are available to handlers for free use or primary markets. This is about 132 percent of the quantity of NS and Oleate raisins shipped during the 2002–03 crop year (305,133 natural condition tons or 286,260 packed tons). (Oleates were included in this computation because, as previously stated, Oleates were combined with the NS varietal type beginning with the 2003–04 crop year.)

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional

offers of reserve raisins make even more raisins available to primary markets, which is consistent with USDA's Guidelines.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions.

Pursuant to § 989.54(d) of the order, this rule establishes final volume regulation percentages for 2003–04 crop NS raisins. The volume regulation percentages are 70 percent free and 30 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season because the final crop estimate of 304,072 tons combined with the carryin inventory of 129,345 tons results in a total available supply of 433,417 tons, which is about 205 percent higher than the 211,493-ton trade demand. (Oleate inventory was included in this computation because, as previously stated, Oleates were combined with the NS varietal type beginning with the 2003–04 crop year.)

The current volume regulation procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins remained fairly steady between the 1993–94 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 42 percent. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $904.60 in 1993–94 to a high of $1,049 in 1996–97, or 16 percent. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Producer prices dropped dramatically for the last three seasons due to record-size production, large carry-in inventories, and stagnant demand.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Deliveries (natural condition tons)	Producer prices (per ton)
2002–03	388,010	[1] $394.85
2001–02	377,328	$650.94
2000–01	432,616	$603.36
1999–2000	299,910	$1,211.25
1998–99	240,469	[2] $1,290.00
1997–98	382,448	$946.52
1996–97	272,063	$1,049.20
1995–96	325,911	$1,007.19
1994–95	378,427	$928.27
1993–94	387,007	$904.60

[1] Return-to-date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to a low of 91,600 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.48 pounds in 2002. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit through out the year.

While the overall demand for raisins has been decreasing (as reflected in decline in commercial shipments), production has been increasing. Deliveries of NS dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–

01 crop year. This large crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Deliveries for the 2001–02 crop year were at 377,328 tons, and deliveries for the 2002–03 crop year were 388,010 tons. This year's crop is estimated at 304,072 tons. Three crop years of high production and a large 2001–02 carryin inventory has contributed to the industry's burdensome supply of raisins.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, producer prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances producer returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

To assess the impact that volume control has on the prices producers receive for their product, an econometric model has been constructed. The model developed is for the purpose of estimating nominal prices under a number of scenarios using the volume control authority under the Federal marketing order. The price producers receive for the harvest and delivery of their crop is largely determined by the level of production and the volume of carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of reserve and free percentages for primary markets, and a reserve pool. The establishment of reserve percentages impacts the production that is marketed in the primary markets.

The reserve percentage limits what handlers can market as free tonnage. Assuming the 70 percent reserve limits the total free tonnage to 212,850 natural condition tons (.70 x the 304,072-ton crop estimate) and carryin is 129,345 natural condition tons, and purchases from reserve total 55,513 natural condition tons (which includes anticipated reserve raisins released through both 10 plus 10 offers), then the total free supply is estimated at 397,708 natural condition tons. The econometric model estimates prices to be $63 per ton higher than under an unregulated scenario. This price increase is beneficial to all producers regardless of size and enhances producers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, it has been determined that volume regulation is warranted this season for only one of the nine raisin varietal types defined under the order.

The free and reserve percentages established by this rule release the full trade demand and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

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

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

This rule invites comments for a 60-day period on the establishment of final volume regulation percentages for 2003–04 crop NS raisins covered under the order. All comments received within the comment period will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 2003–04 crop year apply to all NS raisins acquired from the beginning of that crop year; (2) handlers are currently marketing their 2003–04 crop NS raisins and this action should be taken promptly to achieve the intended purpose of making the full trade demand available to handlers; (3) handlers are aware of this action, which was unanimously recommended at a

public meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended to read as followed:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.257 is added to Subpart—Supplementary Regulations to read as follows:

§ 989.257 Final free and reserve percentages for the 2003–04 crop year.

The final percentages for standard Natural (sun-dried) Seedless raisins acquired by handlers during the crop year beginning on August 1, 2003, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	70	30

Dated: April 16, 2004.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 04–9098 Filed 4–21–04; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 609, 611, 612, 614, 615, and 617

RIN 3052–AB69

Electronic Commerce; Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Borrower Rights; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 609, 611, 612, 613, 614, 615, and 617 on March 9, 2004 (69 FR 10901). This final rule clarifies the rights provided in the Farm Credit Act of 1971, as amended, for loan applicants and borrowers of the Farm Credit System (System). The final rule further explains the responsibilities of the System in providing these rights, responds to comments, and places all borrower rights provisions in one part of our regulations. In accordance with 12 U.S.C. 2252, the effective date of the interim final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is April 19, 2004.

DATES: *Effective Date:* The regulation amending 12 CFR parts 609, 611, 612, 614, 615, and 617 published on March 9, 2004 (69 FR 15045) is effective April 19, 2004.

FOR FURTHER INFORMATION CONTACT: Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Joy Strickland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: April 16, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–9096 Filed 4–21–04; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–59–AD; Amendment 39–13581; AD 2004–08–12]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Models Ventus-2a, Ventus-2b, Discus-2a, and Discus-2b Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Schempp-Hirth Flugzeugbau GmbH (Schempp-Hirth) Models Ventus-2a, Ventus-2b, Discus-2a, and Discus-2b sailplanes. This AD requires you to inspect and modify the elevator mass balance. For Models Discus-2a and Discus-2b sailplanes only, this AD also requires you to replace the elevator pushrod. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct problems within the sailplane elevator control system before they lead to flutter and sailplane instability. This could eventually result in loss of sailplane control.

DATES: This AD becomes effective on June 4, 2004.

As of June 4, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Schempp-Hirth Flugzeugbau GmbH, Postfach 14 43, D–73230 Kirchheim/Teck, Germany; telephone : 011 49 7021 7298–0; facsimile: 011 49 7021 7298–199.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–59–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: Greg 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 Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on Schempp-Hirth Models Ventus-2a, Ventus-2b, Discus-2a, and Discus-2b sailplanes. The LBA reports that the potential exists for elevator mass balance problems on the referenced sailplanes.

What is the potential impact if FAA took no action? Elevator mass balance problems, if not detected and corrected, could lead to flutter and sailplane instability. This could eventually result in loss of sailplane control.

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 Schempp-Hirth Flugzeugbau GmbH (Schempp-

Hirth) Models Ventus-2a, Ventus-2b, Discus-2a, and Discuss-2b sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 17, 2004 (69 FR 7380). The NPRM proposed to require you to inspect and modify the elevator mass balance. For Models Discus-2a and Discus-2b sailplanes only, this proposed AD would also require you to replace the elevator pushrod.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing 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:

—Are consistent with 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 sailplanes does this AD impact? We estimate that the actions specified in Schempp-Hirth Technical Note No. 360–19 would affect 15 sailplanes in the U.S. registry and the actions specified in Schempp-Hirth Technical Note No. 349–28 would affect 51 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the following actions:

Affected technical note	Labor cost	Parts cost	Total cost per sailplane	Total cost U.S. operators
No. 360–19	17 workhours at $65 per hour = $1,105	$135 per sailplane	$1,240	$18,600
No. 349–28	4 workhours at $65 per hour = $260	No cost for parts	260	13,260

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–59–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:

2004–08–12 Schempp-Hirth Flugzeugbau Gmbh: Amendment 39–13581; Docket No. 2003–CE–59–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on June 4, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following model and serial number sailplanes that are certificated in any category:

Group	Models	Serial Nos.
(1) Group 1 Sailplanes	Discus-2a and Discus-2b sailplanes that do not have Shempp-Hirth Technical Note No. 360–16 incorporated.	13 through 22, 24, 27, 30 through 48, 50, 51, 53, 54, 55, 57 through 63, 65, 67, 68, 71 through 79, 81, and 82.
(2) Group 2 Sailplanes	Ventus-2a, Ventus-2b, Discus-2a, and Discus-2b sailplanes.	*Ventus-2a and Ventus-2b:* 1, 2, 31, 32, 48, 54, 71, 117, 124 through 151, and 153; and all serial numbers that incorporate Modification Bulletin 349–42 or are equipped with a new tail unit per Shempp-Hirth Technical Note No. 349–27. *Discus-2a and Discus-2b:* 1 through 185, 187, 188, and 189.

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 of this AD are intended to detect and correct problems within the sailplane elevator control system before they lead to flutter and sailplane instability. This could eventually result in loss of sailplane control.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) *For Group 1 sailplanes:* Add a mass balance to the elevators and install an elevator pushrod in the vertical fin.	Within the next 25 hours time-in-service (TIS) after June 4, 2004 (the effective date of this AD), unless already done.	Follow Schempp-Hirth Technical Note No. 360–19, dated December 20, 2002 (LBA-approved January 18, 2003).
(2) *For Group 2 sailplanes:* Modify the mass balance weights.	Within the next 25 hours TIS after June 4, 2004 (the effective date of this AD), unless already done.	Follow Schempp-Hirth Technical Note No. 349–28, No. 360–20, and No. 863–8 (including appendix), dated September 16, 2003 (LBA-approved September 23, 2003).

May I Request an Alternative Method 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 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Schempp-Hirth Technical Note No. 360–19, dated December 20, 2002 (LBA-approved January 18, 2003); and Schempp-Hirth Technical Note No. 349–28, No. 360–20, and No. 863–8 (including appendix), dated September 16, 2003 (LBA-approved September 23, 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 Schempp-Hirth Flugzeugbau GmbH, Postfach 14 43, D–73230 Kirchheim/Teck, Germany; telephone: 011 49 7021 7298–0; facsimile: 011 49 7021 7298–199. 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 No. 2003–048, effective date: March 6, 2003, and German AD No. 2003–280, effective date: October 2, 2003, also address the subject of this AD.

Issued in Kansas City, Missouri, on April 13, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8793 Filed 4–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–73–AD; Amendment 39–13585; AD 2004–05–01 R1]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. Model Otter DHC–3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising Airworthiness Directive (AD) 2004–05–01, which applies to certain Bombardier Inc. (formerly deHavilland Inc.) Model Otter DHC–3 airplanes that have turbine engines installed per one of three supplemental type certificates (STC). AD 2004–05–01 currently prohibits you from operating any affected airplane with these engine and propeller configurations unless a new STC for an elevator servo-tab with a redundant control linkage is installed. The FAA has since evaluated concerns, comments, and technical information related to all three STC configurations. Based on that evaluation, we have determined that further evaluation is necessary for the STCs owned by Texas Turbines Conversions, Inc., and Canada Turbine Conversions, Inc. Therefore, we are removing reference to these STCs from the AD, and the AD will only apply to those Bombardier Inc. airplanes that incorporate STC No. SA3777NM (A.M. Luton installation of Pratt and Whitney PT6A–34/–135 engine). After further evaluation, we may initiate rulemaking action regarding airplanes with the Texas Turbines Conversions, Inc., and Canada Turbine Conversions, Inc., STC configurations.

DATES: This AD becomes effective on May 25, 2004.

On April 20, 2004 (69 FR 9523, March 1, 2004), the Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by June 29, 2004.

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. 2000–CE–73–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. 2000–CE–73–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 A.M. Luton 3025 Eldridge Avenue, Bellingham, Washington, 98225; telephone (360) 671–7817; facsimile (360) 671–7820.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–73–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: *For Technical Questions Relating to STC No. SA3777NM or STC No. SA01059SE:* Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055; telephone: (425) 917–6507; facsimile: (425) 917–6590.*For Administrative Questions Relating to This AD ACTION:* Larry Werth, AD Coordinator, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4147; facsimile: (816) 329–4149.

SUPPLEMENTARY INFORMATION: *Has FAA taken any action to this point?* Several

reports of situations where pilots of Bombardier Inc. Model Otter DHC–3 airplanes with installed turbine engines experienced buffeting of the elevators and declared an emergency and safely landed their aircraft caused FAA to issue AD 2004–05–01, Amendment 39–13493 (69 FR 9523, March 1, 2004). AD 2004–05–01 currently prohibits operation of any affected airplane that incorporates STC No. SA3777NM, STC No. SA09866SC, or STC No. SA09857SC without incorporation of STC No. SA01059SE. These STCs are as follows:

- STC No. SA3777NM (A.M. Luton installation of Pratt and Whitney PT6A–34/–135 engine);
- STC No. SA09866SC (Texas Turbines Conversions, Inc. installation of Honeywell TPE–331 engine);
- STC No. SA09857SC (Canada Turbine Conversions, Inc. installation of Walter M601E–11 engine); and
- STC No. SA01059SE (American Automotives, Inc. to incorporate a new elevator servo-tab and redundant control linkage).

What has happened since AD 2004–05–01 to initiate this AD action? The FAA has since received and evaluated concerns, comments, and technical information related to all three STC configurations. Based on that evaluation, we have determined that further study is necessary for the STCs owned by Texas Turbines Conversions, Inc., and Canada Turbine Conversions, Inc.

FAA's Determination and Requirements of the AD

What has FAA decided? Therefore, we have determined that reference to the STCs owned by Texas Turbines Conversions, Inc., and Canada Turbine Conversions, Inc. should be removed from the AD.

What does this AD require? This AD revises AD 2004–05–01 by only requiring the actions on those Bombardier Inc. Model Otter DHC–3 airplanes that incorporate STC No. SA3777NM (A.M. Luton installation of Pratt and Whitney PT6A–34/–135 engine) and do not have a new elevator servo-tab and redundant control linkage installed (American Automotives, Inc. STC No. SA01059SE).

Does this mean the FAA cannot take regulatory action in the future? No. Removing the STCs owned by Texas Turbines Conversions, Inc., and Canada Turbine Conversions, Inc., from AD 2004–05–01 does not prevent us from issuing other regulatory action in the future on airplanes that incorporate these STCs.

It also does not commit us to any future action. We will take appropriate regulatory action if (after evaluation of the situation on these two STCs) we determine that there is an unsafe condition.

How does the revision to 14 CFR part 39 affect this 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 before you issue the rule? This AD is a final rule that eliminates certain configurations that may have inadvertently grounded certain airplanes. In order to not inadvertently ground these airplanes, this action was not preceded by notice and an opportunity for public comment. It has no adverse economic impact and imposes no additional burden on any person than would have been necessary to do AD 2004–05–01.

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. 2000–CE–73–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 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. 2000–CE–73–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 removing Airworthiness Directive (AD) 2004–05–01, Amendment 39–13493 (69 FR 9523, March 1, 2004), and by adding a new AD to read as follows:

2004–05–01 R1 Bombardier Inc.: Amendment 39–13585; Docket No. 2000–CE–73–AD; Revises AD 2004–05–01, Amendment 39–13493.

When Does This AD Become Effective?

(a) This AD becomes effective on May 25, 2004.

Are Any Other ADs Affected By This Action?

(b) This AD revises AD 2004–05–01, Amendment 39–13493.

What Airplanes Are Affected by This AD?

(c) This AD affects any Model Otter DHC–3 airplane (all serial numbers) that:

(1) Has a turbine engine installed per Supplemental Type Certificate (STC) No. SA3777NM (A.M. Luton installation of Pratt and Whitney PT6A–34/–135 engine); and

(2) is certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of the control rod to the servo trim tab system

detaching from the servo trim tab and causing the servo trim tab to flutter on airplanes with a turbine engine installed. The actions specified in this AD are intended to prevent a single failure of the elevator servo trim tab system, which could cause severe elevator flutter. Such elevator flutter could lead to possible loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Do not operate any airplane that has a turbine engine installed per STC No. SA3777NM and DOES NOT have an elevator servo-tab and redundant control linkage per STC No. SA01059SE.	Within 3 calendar months after April 20, 2004 (the effective date of AD 2004–05–01) or within 250 hours time-in-service (TIS) after April 20, 2004 (the effective date of AD 2004–05–01), whichever occurs first.	Not Applicable.
(2) You may install at the same time a turbine engine per STC No. SA3777NM and a new elevator servo-tab and redundant control linkage per STC No. SA01059SE.	Before further flight as of April 20, 2004 (the effective date of AD 2004–05–01).	Follow American Aeromotives, Inc. DHC–3 Otter Service Letter No. AAI–DHC3–02.01, Revision No. IR, dated April 9, 2002.
(3) You may operate an affected airplane installed with a turbine engine per STC No. SA3777NM if you install a new elevator servo-tab and redundant control linkage per STC No. SA01059SE.	Within 3 calendar months after April 20, 2004 (the effective date of AD 2004–05–01) or within 250 hours time-in-service (TIS) after April 20, 2004 (the effective date of AD 2004–05–01), whichever occurs first.	Follow American Aeromotives, Inc. DHC–3 Otter Service Letter No. AAI–DHC3–02.01, Revision No. IR, dated April 9, 2002.
(4) Do not install a turbine engine per STC No. SA3777NM, unless you have installed a new elevator servo-tab and redundant control linkage per STC No. SA01059SE.	As of April 20, 2004 (the effective date of AD 2004–05–01).	Not Applicable.

May I Request an Alternative Method 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 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) For information on any already approved alternative methods of compliance (AMOCs), contact Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055; telephone: (425) 917–6507; facsimile: (425) 917–6590.

(2) AMOCs approved through AD 2004–05–01 are also considered approved for this AD.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in American Aeromotives, Inc. DHC–3 Otter Service Letter No. AAI–DHC3–02.01, Revision No. IR, dated April 9, 2002. On April 20, 2004 (69 FR 9523, March 1, 2004), the Director of the Federal Register previously approved the incorporation by reference of this service letter in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from American Aeromotives, Inc., 3025 Eldridge Avenue, Bellingham, Washington 98225, telephone: (360) 671–7817; facsimile: (360) 671–7820. 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.

Issued in Kansas City, Missouri, on April 15, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9017 Filed 4–21–04; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC96

NASA Grant and Cooperative Agreement Handbook—Certifications, Disclosures, and Assurances

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant and Cooperative Agreement Handbook (Handbook) to require that announcements of funding opportunities advise potential applicants for grants and cooperative agreements that they will be required to submit required certifications, disclosures, and assurances with their proposals; and clarify the methods for ensuring compliance with certifications, disclosures, and assurances. This change is made to inform applicants of the requirement to demonstrate compliance prior to proposal preparation instead of prior to award, thereby giving potential applicants advance notice of these requirements.

EFFECTIVE DATE: April 22, 2004.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AC96, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Suzan Moody, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments can also be submitted by e-mail to: *Suzan.P.Moody@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Suzan P. Moody, NASA Headquarters, Code HC, Washington, DC, (202) 358–0503, e-mail: *Suzan.P.Moody@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Handbook currently requires grant officers to ensure that all necessary certifications, disclosures, and assurances regarding debarment and suspension, lobbying, and nondiscrimination have been obtained prior to awarding a grant or cooperative agreement. This policy effectively requires applicants to demonstrate compliance with the required certifications, disclosures, and assurances prior to award but not necessarily prior to proposal submission. This change will require that announcements of funding opportunities advise applicants that they must demonstrate compliance with all required certifications, disclosures, and assurances in their proposal submissions. This change is made to

inform applicants of the requirement to demonstrate compliance prior to proposal preparation instead of prior to award, thereby giving potential applicants advance notice of these requirements. Additionally, the methods for demonstrating compliance with certifications, disclosures, and assurances are clarified. The first method provides for each individual certification, disclosure, and assurance to be signed by the Authorizing Institutional Representative. The second method currently provides that ''Signature by the Authorizing Institutional Representative on the proposal Cover Page may confirm that all necessary certifications and assurances are met.'' This statement is only accurate when the Cover Page includes a notice that lists each certification and assurance, and states that signature by the Authorizing Institutional Representative confirms that these specific certifications and assurances are met. To clarify this requirement, the Handbook will be revised to state: ''Signature by the Authorizing Organizational Representative on the proposal Cover Page may confirm that all necessary certifications and assurances are met, provided that the Cover Page includes a notice to that effect.'' An administrative change is made to change the term ''Authorizing Institutional Representative'' to ''Authorizing Organizational Representative'' because the latter term is more commonly used by NASA recipients. Finally, this final rule corrects the list of NASA implementing regulations in paragraph (c) of the Provision at § 1260.32, ''Nondiscrimination'' by adding ''14 CFR 1253''.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because the changes do not impose additional requirements. The changes only modify the timing of existing requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 14 CFR part 1260 is amended as follows:

■ 1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*)

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

■ 2. Revise paragraph (c) in §1260.10 to read as follows:

§ 1260.10 Proposals.

* * * * *

(c)(1) All announcements for grant and cooperative agreement funding opportunities shall require the applicant to submit all required certifications, disclosures, and assurances as part of the proposal. The following certifications and assurance are required to be submitted as part of all proposals:

(i) A certification for debarment and suspension under the requirements of 14 CFR 1265.510.

(ii) A certification, and a disclosure form (SF LLL) if required, on Lobbying under the requirements of 14 CFR 1271.110 for awards exceeding $100,000.

(iii) An assurance of Compliance with NASA Regulations Concerning Nondiscrimination as required by 14 CFR parts 1250 through 1253 or incorporation by reference of a signed NASA Form 1206 that is on file, current, and accurate.

(2) Compliance with certifications, disclosures, and assurances must be demonstrated by one of the following two methods:

(i) Each individual certification, disclosure, and assurance may be signed by the Authorizing Organizational Representative; or

(ii) Signature by the Authorizing Organizational Representative on the proposal Cover Page may confirm that all necessary certifications and assurances are met, provided that the Cover Page includes a notice to that effect.

* * * * *

■ 3. Revise the undesignated headings and paragraph (c) in § 1260.32 to read as follows:

§ 1260.32 Nondiscrimination.

Nondiscrimination

April 2004.

* * * * *

(c) Work on NASA grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d–1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR parts 1250, 1251, 1252, and 1253).

* * * * *

[FR Doc. 04–9015 Filed 4–21–04; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2003–P–029]

RIN 0651–AB71

Revision of Patent Term Extension and Patent Term Adjustment Provisions

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The patent term extension provisions of the Uruguay Round Agreements Act (URAA) and the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) each provide for the possibility of patent term extension or adjustment if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences (BPAI) or by a Federal court and the patent was issued pursuant to or under a decision in the review reversing an adverse determination of patentability. The United States Patent and Trademark Office (Office) is revising the rules of practice in patent cases to indicate that under certain circumstances a panel remand by the BPAI shall be considered a decision in the review reversing an adverse determination of patentability for purposes of patent term extension or patent term adjustment. The Office is also adopting other miscellaneous changes to the patent term adjustment provisions of the rules of practice.

DATES: *Effective Date:* May 24, 2004.

Any request for reconsideration of the patent term extension or adjustment indicated on a patent resulting from an application in which the notice of

allowance was mailed before May 24, 2004 on the basis of the changes to 37 CFR 1.701 or 1.702 in this final rule must be filed no later than July 21, 2004.

FOR FURTHER INFORMATION CONTACT: Kery A. Fries, Legal Advisor, Office of Patent Legal Administration, by telephone at (703) 305–1383, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (703) 746–3240, marked to the attention of Kery A. Fries.

SUPPLEMENTARY INFORMATION: Section 532(a) of the URAA (Pub. L. 103–465, 108 Stat. 4809 (1994)) amended 35 U.S.C. 154 to provide that the term of a patent ends on the date that is twenty years from the filing date of the application, or the earliest filing date for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c). Public Law 103–465 also contained provisions, codified at 35 U.S.C. 154(b), for patent term extension due to certain examination delays. The Office implemented the patent term extension provisions of the URAA in a final rule published in April of 1995. *See Changes to Implement 20-Year Patent Term and Provisional Applications,* 60 FR 20195 (Apr. 25, 1995), 1174 *Off. Gaz. Pat. Office* 15 (May 2, 1995) (final rule).

The AIPA (Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999)) further amended 35 U.S.C. 154(b) to include additional bases for patent term extension (characterized as ''patent term adjustment'' in the AIPA). Original utility and plant patents issuing from applications filed on or after May 29, 2000, may be eligible for patent term adjustment if issuance of the patent is delayed due to one or more of the enumerated administrative delays listed in 35 U.S.C. 154(b)(1). The Office implemented the patent term adjustment provisions of the AIPA in a final rule published in September of 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term,* 65 FR 56365 (Sept. 18, 2000), 1239 *Off. Gaz. Pat. Office* 14 (Oct. 3, 2000) (final rule). The patent term adjustment provisions of the AIPA apply to original (*i.e.*, non-reissue) utility and plant applications filed on or after May 29, 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term,* 65 FR at 56367, 1239 *Off. Gaz. Pat. Office* at 14–15. The patent term extension provisions of the URAA (for delays due to secrecy order, interference or successful appellate review) continue to apply to original utility and plant applications filed on or after June 8, 1995, and before May 29, 2000. *See id.*

The Office is amending the rules of practice in patent cases to indicate that certain remands by the BPAI shall be considered ''a decision in the review reversing an adverse determination of patentability'' for patent term adjustment and patent term extension purposes. Specifically, if an application is remanded by a panel of the BPAI and the remand is the last action by a BPAI panel prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision reversing an adverse determination of patentability for patent term adjustment and patent term extension purposes. However, a panel remand shall not be considered a decision in the review reversing an adverse determination of patentability if there is filed a request for continued examination under 35 U.S.C. 132(b) (§ 1.114) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

The term ''panel'' of the BPAI means a panel comprised of members of the BPAI as defined in 35 U.S.C. 6(a). The phrase ''remanded by a panel'' of the BPAI does not pertain to a remand or order returning an appeal to the examiner issued by a BPAI administrator. *See e.g., Revised Docketing Procedures for Appeals Arriving at the Board of Patent Appeals and Interferences,* 1260 *Off. Gaz. Pat. Office* 18 (July 2, 2002). The phrase ''remanded by a panel'' of the BPAI also does not pertain to a remand or order returning an appeal to the examiner that is issued by a BPAI administrator subsequent to the issuance of a docketing notice.

The Office initially took the position that a remand by a BPAI panel was not a ''decision'' within the meaning of 35 U.S.C. 154(b)(1)(A)(iii), much less ''a decision reversing an adverse determination of patentability'' as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii). *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term,* 65 FR at 56369, 1239 *Off. Gaz. Pat. Office* at 16. The Office has subsequently determined that there are a number of BPAI panel remands that convey the weakness in the examiner's adverse patentability determination in a manner tantamount to a decision reversing the adverse patentability determination. Such a BPAI panel remand generally results in the examiner allowing the application (either with or without further action by applicant) without returning the application with a response to the issues raised in the remand to the BPAI for a decision on the appeal. The changes in this final rule address the situation in which an examiner responds to a remand by a BPAI panel by allowing the application (either with or without further action by applicant), rather than returning the application with a response to the issues raised in the remand to the BPAI for a decision on the appeal. In this situation, the BPAI panel remand shall be considered ''a decision in the review reversing an adverse determination of patentability'' for patent term extension and patent term adjustment purposes. The changes in this final rule, however, will not apply if, after the BPAI panel remand, there is filed a request for continued examination under 35 U.S.C. 132(b) (§ 1.114) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

If the patent issues after a remand that is considered ''a decision in the review reversing an adverse determination of patentability,'' the BPAI panel remand is deemed by the Office to be the ''final decision in favor of the applicant'' for purposes of a patent term extension or adjustment calculation under § 1.701(c)(3) or § 1.703(e) (as applicable). The period of extension or adjustment calculated under § 1.701(c)(3) or § 1.703(e) (as applicable) would equal the number of days in the period beginning on the date on which a notice of appeal to the BPAI was filed under 35 U.S.C. 134 and § 1.191 and ending on the mailing date of the BPAI panel remand.

The Office also proposed changes to §§ 1.704 and 1.705 in a rule making to implement portions of the Office's 21st Century Strategic Plan. *See Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan,* 68 FR 53816, 53843, 53857–58 (Sept. 12, 2003), 1275 *Off. Gaz. Pat. Office* 23, 45–46, 60 (Oct. 7, 2003) (proposed rule) (hereinafter ''*21st Century Strategic Plan* notice of proposed rule making''). The Office is adopting changes to §§ 1.704 and 1.705 proposed in the *21st Century Strategic Plan* notice of proposed rule making in this final rule so that all changes to the patent term adjustment provisions of the rule of practice currently under consideration will be adopted in the same final rule.

Discussion of Specific Rules

Section 1.701: Section 1.701(a)(3) is amended by adding the following sentence: If an application is remanded by a panel of the Board of Patent Appeals and Interferences and the

remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809, 4983–85 (1994), and a final decision in favor of the applicant under § 1.701(c)(3). Section 1.701(a)(3) is also amended to provide that a panel remand shall not be considered a decision in the review reversing an adverse determination of patentability as provided in § 1.701(a)(3) if there is filed a request for continued examination under 35 U.S.C. 132(b) (§ 1.114) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. Section 1.701(a)(3) is also amended to change ''decision reversing an adverse determination of patentability'' to ''decision in the review reversing an adverse determination of patentability'' for consistency with 35 U.S.C. 154(b)(2) as amended by section 532(a) of the URAA.

Section 1.702: Section 1.702(e) is amended by adding the following sentence: If an application is remanded by a panel of the Board of Patent Appeals and Interferences and the remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision by the Board of Patent Appeals and Interferences as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii), a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii), and a final decision in favor of the applicant under § 1.703(e). Section 1.702(e) is also amended to provide that a panel remand shall not be considered a decision in the review reversing an adverse determination of patentability as provided in § 1.702(e) if there is filed a request for continued examination under 35 U.S.C. 132(b) (§ 1.114) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. Section 1.702(e) is also amended to change ''decision reversing an adverse determination of patentability'' to ''decision in the review reversing an adverse determination of patentability'' for consistency with 35 U.S.C. 154(b)(1)(C)(iii).

Section 1.703: Section 1.703(f) is amended to change ''[t]o the extent that periods of adjustment attributable to the grounds specified in § 1.702 overlap'' to ''[t]o the extent that periods of delay attributable to the grounds specified in § 1.702 overlap'' for consistency with 35 U.S.C. 154(b)(2)(A). The language of former § 1.703(f) misled applicants into believing that delays under 35 U.S.C. 154(b)(1)(A) (§§ 1.702(a) and 1.703(a)) and delays under 35 U.S.C. 154(b)(1)(B) (§§ 1.702(b) and 1.703(b)) were overlapping only if the period of delay under 35 U.S.C. 154(b)(1)(A) occurred more than three years after the actual filing date of the application. If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)–(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A).

Section 1.704: Section 1.704(d) is amended to change ''cited in a communication'' to ''first cited in any communication'' in order to clarify that the item must have been first cited in any communication from a foreign patent office in a counterpart application instead of merely being cited in such a communication. An applicant who fails to cite an item, within thirty days of receipt by an individual designated in § 1.56(c) of a first communication from a foreign patent office in a counterpart application citing the item, and instead files an information disclosure statement, within thirty days of a subsequent communication citing the item, cannot be considered to have acted with reasonable efforts to conclude prosecution of the application. The change to require that this thirty-day time period run from a first communication parallels the corresponding language in § 1.97(e)(1). The provisions of § 1.704(d) do not apply if the applicant does not submit the information disclosure statement within thirty days of a first communication including a citation of an item to a party designated in § 1.56(c). In such situations, the submission of an information disclosure statement may be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under § 1.704(c)(6), (c)(8), (c)(9), or (c)(10).

Section 1.705: Section 1.705(d) is amended to provide that a patentee may request reconsideration of the patent term adjustment within two months of the date the patent issued if the patent indicates a revised patent term adjustment relative to the patent term adjustment indicated on the notice of allowance. The Office currently includes the patent term adjustment information that will be printed on the face of the patent on the Issue Notification. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR at 56388, 1239 *Off. Gaz. Pat. Office* at 33 (response to comment 49). The Office plans to discontinue the practice of including patent term adjustment information on the Issue Notification, but is changing the period for filing a request for reconsideration under § 1.705(d) of the patent term adjustment indicated in the patent from thirty days to two months. This two-month period in § 1.705(d) is non-extendable. *See* § 1.705(e).

The Patent Application Locating and Monitoring (PALM) system maintains computerized contents records of all patent applications and reexaminations. The Patent Application Information and Retrieval (PAIR) system provides public access to PALM for patents and applications that have been published (*i.e.*, applications no longer being maintained in confidence), which can be accessed over the Internet at *http://pair.uspto.gov*. The PAIR system also has a private side (*http://pair-direct.uspto.gov*) which may be used by an applicant to access confidential information about his or her pending application. *See Clarification of 37 CFR 1.704(c)(10)—Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 *Off. Gaz. Pat. Office* 111, 112 (June 26, 2001). While the Office plans to discontinue the practice of including patent term adjustment information on the Issue Notification, applicants can check PAIR to see the Office's current patent term adjustment determination upon receipt of the Issue Notification to ascertain whether the patent term adjustment determination has been revised since the mailing of the notice of allowance.

Section 1.705(d) is also amended to permit a patentee to file the request for reconsideration if the patent indicates or should have indicated a revised patent term adjustment of a revision to patent term adjustment indicated in the notice of allowance. Section 1.705(d) formerly provided that a request for reconsideration under § 1.705(d) was limited to the situation where the patent issues on a date other than the projected

date of issue. There are a number of papers which if submitted by an applicant after the mailing of the notice of allowance will result in a reduction of any patent term adjustment, such as: (1) Request for refunds; (2) status letter; (3) amendments under § 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biological deposits; and (8) oaths or declarations. *See* § 1.704(c)(10). In addition, receipt of the payment of the issue fee more than three months after mailing of the notice of allowance will also result in a reduction of any patent term adjustment. *See* § 1.704(b) and § 1.703(f) (''[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation''). There are also Office delays that may occur after the mailing of the notice of allowance which may result in an increase in the amount of patent term adjustment, such as the failure to issue the patent within four months after the date the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied, or the failure to issue the patent within three years after the date on which an application was filed under 35 U.S.C. 111(a). *See* § 1.702(a)(4) and § 1.702(b).

Section 1.705(d) is also amended to provide that any request for reconsideration under § 1.705(d) that raises issues that were raised, or could have been raised, in an application for patent term adjustment under § 1.704(b) shall be dismissed as untimely as to those issues. The purpose of § 1.705(d) is to provide patentees with an avenue to obtain reconsideration of the patent term adjustment indicated in the patent when the patent term adjustment indicated in the patent differs or should have differed from the patent term adjustment indicated in the notice of allowance due to events occurring after the mailing of the notice of allowance. Section 1.705(d) is not an avenue for patentees to seek review of issues that were raised, or could have been raised, in an application for patent term adjustment under § 1.704(b). Any request for reconsideration of the patent term adjustment indicated in the patent on the basis of issues that were raised, or could have been raised, in an application for patent term adjustment under § 1.704(b) is considered untimely if not filed within the period specified in § 1.705(b).

Requests for reconsideration of patent term adjustment determinations indicated in notice of allowances and patents under 35 U.S.C. 154(b) and §§ 1.702 through 1.704 are provided for in § 1.705. Petitions under § 1.182 or 1.183, or requests for a certificate of correction under either 35 U.S.C. 254 and § 1.323 or 35 U.S.C. 255 and § 1.324, are not substitute *fora* to obtain reconsideration of a patent term adjustment determination indicated in a notice of allowance if an applicant fails to submit a request for reconsideration within the time period specified in § 1.705(b), or to obtain reconsideration of a patent term adjustment determination indicated in a patent if a patentee fails to submit a request for reconsideration within the time period specified in § 1.705(d).

Response to comments: The Office published a notice proposing changes to the rules of practice to provide that under certain circumstances a panel remand by the BPAI shall be considered a decision in the review reversing an adverse determination of patentability for purposes of patent term extension or patent term adjustment. *See Revision of Patent Term Extension and Patent Term Adjustment Provisions Related to Decisions by the Board of Patent Appeals and Interferences* 68 FR 67818 (Dec. 4, 2003), 1277 *Off. Gaz. Pat. Office* 227 (Dec. 30, 2003) (proposed rule). The Office received seven written comments (from an intellectual property organization, a law firm, a business, and patent practitioners) in response to this notice of proposed rule making. The Office also received five written comments concerning §§ 1.704 and 1.705 in response to the *21st Century Strategic Plan* notice of proposed rule making. Comments generally in support of a change are not discussed. The comments and the Office's responses to those comments follow:

Comment 1: One comment questioned whether the Office has the authority to interpret a remand from the BPAI as a decision by the BPAI reversing an adverse determination of patentability. The comment suggested that the Office should amend the rules of practice to permit the BPAI to designate a remand as a decision by the BPAI reversing an adverse determination of patentability.

Response: 35 U.S.C. 2(b)(2) provides that the Office may establish regulations, not inconsistent with law, which shall govern the conduct of proceedings in the Office, 35 U.S.C. 3(a)(2)(A) provides that the Director is responsible for providing policy direction and management supervision for the Office, and 35 U.S.C. 154(b)(3)(A) provides that the Director shall prescribe regulations establishing procedures for the application for and determination of patent term adjustments under 35 U.S.C. 154(b). Therefore, the Office has sufficient rule making authority to promulgate regulations to avoid situations in which an applicant is deprived of patent term extension or adjustment because a BPAI panel designates a decision as a remand rather than as a reversal coupled with a remand.

Comment 2: One comment suggested that the Office should amend the rules of practice to permit the BPAI to designate a remand as a decision by the BPAI reversing an adverse determination of patentability.

Response: It is unnecessary to amend the rules of practice to provide that a BPAI panel may designate a remand as a decision by the BPAI reversing an adverse determination of patentability. First, a BPAI panel may do so in essence by designating the decision as a reversal coupled with a remand. Second, a BPAI panel remand will be considered a ''decision in the review reversing an adverse determination of patentability'' under § 1.701(a)(3) or § 1.702(e) as amended in this final rule if the remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application (except if there is filed a request for continued examination under 35 U.S.C. 132(b) (§ 1.114) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.).

Comment 3: One comment suggested that the Office should treat a remand by a BPAI administrator the same as a remand by a BPAI panel in determining whether the remand is considered a decision in the review reversing an adverse determination of patentability for patent term extension and adjustment purposes.

Response: The Office cannot treat a remand or other order by an administrator as a ''decision in the review reversing an adverse determination of patentability'' for patent term extension or adjustment purposes because an administrator is not a member of the BPAI as defined in 35 U.S.C. 6(a) and because 35 U.S.C. 6(b) requires that appeals be heard by at least three members of the BPAI. While the Office has proposed to define BPAI as including a BPAI member or employee acting with the authority of the BPAI for certain purposes (proposed § 41.2(2)), the Office has cautioned that this definition of ''BPAI'' is not applicable in a situation in which action by a BPAI panel is required by statute, and has also proposed to define BPAI member as a member of the BPAI as set forth in 35 U.S.C. 6(a) (proposed § 41.2(3)). *See Rules of Practice Before the Board of Patent Appeals and*

Interferences, 68 FR 66647, 66649 (Nov. 26, 2003), 1277 *Off. Gaz. Pat. Office* 157, 159 (Dec. 23, 2003) (proposed rule).

Comment 4: Several comments suggested that the filing of an information disclosure statement or certain amendments should not preclude a remand from being considered a decision in the review reversing an adverse determination of patentability for patent term extension or adjustment purposes. The comments provided the following examples of amendments that should not preclude a remand from being considered a decision in the review reversing an adverse determination of patentability for patent term extension or adjustment purposes: (1) Amendments which only correct formal matters (*e.g.*, update the address of a depository such as the American Type Culture Collection (ATCC); (2) amendments which improve the clarity of the claims; (3) amendments which rejoin claims that were withdrawn pending the allowance of a product claim; (4) amendments which only define the claims over newly cited prior art; (5) an examiner's amendment or examiner requested amendment; (6) amendments that do not address the merits of the claims; (7) amendments that change the title or abstracts to correspond to all of the allowed claims; (8) inconsistencies between reference characters used in the specification and those used in the drawings; (9) inconsistent case use of pronouns; (10) resubmission of documents that were lost by the Office; (11) amendments which incorporate limitations from a dependent claim into an independent claim; and (12) any amendment so long as at least one previously rejected claim is allowed in unamended form. One comment suggested that if an information disclosure statement contains a certification under § 1.704(d), the information disclosure statement should not preclude a remand from being considered a decision in the review reversing an adverse determination of patentability for patent term extension or adjustment purposes. One comment suggested that a remand should be treated as a decision by the BPAI reversing an adverse determination of patentability any time the examiner *sua sponte* withdraws all of the rejections against any one claim. Finally, one comment suggested that if the Office drops any issue raised upon appeal after the remand, the examiner's dropping of an issue raised upon appeal should be considered a decision in the review reversing an adverse determination of patentability.

Response: The suggestions are adopted in part as follows. If an application is remanded by a panel of the BPAI and the remand is the last action of a BPAI panel prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the Office will consider that remand to be a decision in the review reversing an adverse determination of patentability. Therefore, if the examiner allows the application (patent term extension or adjustment is not relevant if the application is not ultimately allowed) without returning the application to the BPAI for decision (and thus the BPAI panel remand is the last action by a BPAI panel in the application), the Office will consider that remand to be a decision in the review reversing an adverse determination of patentability. A panel remand, however, shall not be considered a decision in the review reversing an adverse determination of patentability if there is filed a request for continued examination under 35 U.S.C. 132(b) (§ 1.114) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

Comment 5: One comment also suggested that the Office should permit applicant to petition under § 1.705 for a case-by-case determination of whether the BPAI remand should be considered a decision in the review reversing an adverse determination of patentability for patent term extension or adjustment purposes.

Response: The statutory scheme of 35 U.S.C. 154(b) provides that patent term adjustment and reductions to patent term adjustment are determined by objective criteria rather than on the basis of *ad hoc* determinations. That is, 35 U.S.C. 154(b)(1) specifies certain objective conditions under which (subject to certain conditions and limitations) an applicant is entitled to patent term adjustment, and 35 U.S.C. 154(b)(2)(C) requires the Office to specify (by regulations) the conditions under which there will be a reduction of patent term adjustment under 35 U.S.C. 154(b)(1). Thus, it is more in line with the statutory scheme set forth in 35 U.S.C. 154(b) for the Office to specify objective criteria under which a BPAI panel remand will be considered a decision in the review reversing an adverse determination of patentability for patent term extension or adjustment purposes, than it would be to leave this to case-by-case determinations.

In addition, as discussed in the final rule to implement the patent term adjustment provisions of the AIPA: "the Office must make its patent term adjustment determinations by a computer program that uses the information recorded in the Office's automated patent application information system (the Patent Application Location and Monitoring system or PALM system). Thus, the Office must determine whether the Board of Patent Appeals and Interferences (or court) decision was of a nature such that 'the patent was issued under a decision in the review reversing an adverse determination of patentability' under 35 U.S.C. 154(b)(1)(C)(iii) from information concerning the decision susceptible of being recorded in the PALM system (rather than by a case-by-case review of each decision).'' *See Changes To Implement Patent Term Adjustment Under Twenty-Year Patent Term,* 65 FR at 56370, 1239 *Off. Gaz. Pat. Office* at 17 (quoting 35 U.S.C. 154(b)(1)(C)(iii)).

Comment 6: One comment suggests that the rule be automatically retroactively applied or alternately set up a petition procedure where patentees would be allowed to petition for recalculation of the patent term extension or adjustment determination based upon the amended rule.

Response: The Office cannot "automatically'' apply revised §§ 1.701(a)(3) and 1.702(e) retroactively in applications in which the notice of allowance was mailed before May 24, 2004. However, a patentee who believes that the patent term extension or adjustment indicated on his or her patent would have been calculated differently under § 1.701(a)(3) or § 1.702(e) as amended in this final rule may file a request for reconsideration of the patent term extension or adjustment indicated on the patent. Any such request for reconsideration must be filed no later than July 21, 2004.

For applications in which the notice of allowance is mailed on or after May 24, 2004, any applicant who believes that the URAA patent term extension (§ 1.701) or AIPA patent term adjustment (§§ 1.702 through 1.705) indicated in the notice of allowance was not calculated correctly in view of the changes to § 1.701(a)(3) or § 1.702(e) in this final rule must file a timely petition under § 1.181 or timely request for reconsideration under § 1.705(b) (respectively) to have the patent term extension or adjustment determination corrected. Any applicant who believes that the URAA patent term extension (§ 1.701) or AIPA patent term adjustment (§§ 1.702 through 1.705) indicated in the notice of allowance was not calculated correctly on any basis other than the changes to § 1.701(a)(3) or § 1.702(e) in this final rule must file a

timely petition under § 1.181 or timely request for reconsideration under § 1.705(b) (respectively) to have the patent term extension or adjustment determination corrected.

Comment 7: One comment suggests that the period of adjustment for administrative delay should end on the date of the mailing of the notice of allowance, not on the mailing date of the remand.

Response: The suggestion is not adopted. If an application is allowed after a panel remand by the BPAI, the period of appellate review ended with the decision (remand) by the BPAI.

Comment 8: Several comments indicated that events such as the filing of a request for refund or the filing of a status letter are caused by an Office error or delay, and should not result in a reduction of patent term adjustment under § 1.704(c)(10).

Response: The patent term adjustment provisions of 35 U.S.C. 154(b) provide that ''[t]he Director shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.'' *See* 35 U.S.C. 154(b)(2)(C)(iii). Section 1.704(c)(10) provides that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include ''[s]ubmission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of: (i) [t]he number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (ii) [f]our months.'' The Office did not propose any change to the provisions of § 1.704(c). The *21st Century Strategic Plan* notice of proposed rule making, however, did include a previously published clarification of the provisions of § 1.704(c)(10). *See Clarification of 37 CFR 1.704(c)(10)—Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance Has Been Mailed,* 1247 *Off. Gaz. Pat. Office* at 111–12.

The filing of certain papers, such as a request for refund or a status letter, after a notice of allowance has been mailed causes substantial interference with the patent issue process. See id. Therefore, pursuant to the authority to 35 U.S.C. 154(b)(2)(C)(iii), the Office has prescribed a regulation (§ 1.704(c)(1)) establishing the filing of such papers after a notice of allowance has been mailed as a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.

Section 1.26(b) provides a lengthy (two-year) period for filing any request for refund. Thus, applicants may avoid a reduction of any patent term adjustment by not filing a request for refund during the period between the mailing of a notice of allowance and the date the patent is issued. Applicants who choose to file a request for refund at a time when the filing of such a paper causes interference with the patent issue process must accept the negative impact on patent term adjustment that will result from such a course of action.

As discussed above, the PAIR system provides public access to PALM for patents and applications that have been published which can be accessed over the Internet (at http://pair.uspto.gov), and has a private side (*http://pair-direct.uspto.gov*) which may be used by an applicant to access confidential information about his or her pending application. *See id.* Thus, applicants who choose to file status letters rather than check the status of their applications via the PAIR system must accept the negative impact on patent term adjustment that will result from such a course of action.

Comment 9: Several comments indicated that the thirty-day period provided in § 1.704(d) was too short and should be changed to three months for consistency with § 1.97(e).

Response: Section 1.704(d) was adopted to permit applicants to submit information cited in a communication from a foreign patent office in a counterpart application to the Office without a reduction in patent term adjustment if an information disclosure statement is promptly (within thirty days of receipt of the communication) submitted to the Office.

See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term, 65 FR at 56373, 56385, 1239 *Off. Gaz. Pat. Office* at 20, 30–31. The Office did not propose to change the thirty-day period provided in § 1.704(d).

Section 1.704(d) does not provide that an information disclosure statement must be submitted within its thirty-day period to avoid a reduction of patent term adjustment (or to be considered by the Office), but rather provides a ''safe-harbor'' against reductions to patent term adjustment under §§ 1.704(c)(6), (c)(8), (c)(9), or (c)(10) that may result from the filing of an information disclosure statement. The filing of an information disclosure statement during any of the periods set forth in §§ 1.704(c)(6), (c)(8), (c)(9), or (c)(10) will interfere with the patent examination or printing process. Therefore, the Office must limit the time period in § 1.704(d) to thirty days to avoid substantial interference with the Office's ability to meet the time frames specified in 35 U.S.C. 154(b)(1). *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term,* 65 FR at 56385, 1239 *Off. Gaz. Pat. Office* at 30.

Rule Making Considerations

Administrative Procedure Act

The change to § 1.703 in this final rule simply amends its provisions for consistency with 35 U.S.C. 154(b)(2)(A), and the change to § 1.705 concerns only the procedures for requesting reconsideration of the patent term adjustment determination printed on the patent. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). *See Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and exempt from the Administrative Procedure Act's notice and comment requirement).

Regulatory Flexibility Act

As discussed previously, the changes to §§ 1.703 and 1.705 involve interpretive rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), for which prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law).

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The provisions of the Regulatory Flexibility Act relating to the preparation of a flexibility analysis are not applicable to this rule making because the changes in this final rule will not have a significant economic impact on a substantial number of small entities.

The primary change in this final rule (§§ 1.701 and 1.702) is to set forth the circumstances under which the Office

will consider a remand by the BPAI to be a decision in the review reversing an adverse determination of patentability for purposes of patent term extension and patent term adjustment. Of the 3,843 decisions in *ex parte* appeals in fiscal year 2003, 454 of these decisions remanded the application without affirming or reversing any of the rejections on appeal. Since approximately 25% of the patents granted in fiscal year 2003 were to small entities, the Office estimates that approximately 114 small entity applicants may be affected by the change to §§ 1.701 and 1.702 in this final rule. Since the Office received over 350,000 nonprovisional applications in fiscal year 2003, the change to §§ 1.701 and 1.702 in this final rule would impact relatively few (fewer than 0.1% of) patent applicants.

The change to § 1.704 merely clarifies that the thirty-day time period in § 1.704(d) runs from the first citation of the information by a foreign patent office, and that a subsequent citation of the same information by another foreign patent office would not start a new thirty-day period. Thus, the change to § 1.704 in this final rule will not have a significant economic impact on any entity.

In any event, the changes in this final rule merely concern the Office's manner of calculating patent term extension or patent term adjustment determination in certain situations, and revise the time period (from thirty days to two months) for requesting reconsideration of the patent term adjustment determination printed on the patent. The changes in this final rule would not impose any additional fees or requirements on any patent applicant. The Office published a notice of proposed rule making and certified that an initial Regulatory Act Analysis was not required. No comment on the changes being adopted in this final rule made reference to any impact of the changes on small entities.

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this final rule has been reviewed and previously approved by OMB under OMB control number 0651–0020. The United States Patent and Trademark Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this final rule do not affect the information collection requirements associated with the information collection under OMB control number 0651–0020.

The title, description and respondent description of this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The primary change in this final rule is to set forth the circumstances under which the Office will consider a remand by the BPAI to be a decision in the review reversing an adverse determination of patentability for purposes of patent term extension and patent term adjustment.

OMB Number: 0651–0020.

Title: Patent Term Extension.

Form Numbers: None.

Type of Review: Approved through October of 2004.

Affected Public: Individuals or households, business or other for-profit institutions, not-for-profit institutions, farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 26,859.

Estimated Time Per Response: Between 1 and 25 hours.

Estimated Total Annual Burden Hours: 30,905 hours.

Needs and Uses: The information supplied to the United States Patent and Trademark Office by an applicant requesting reconsideration of a patent term adjustment determination under 35 U.S.C. 154(b) (§ 1.702 *et seq.*) is used by the United States Patent and Trademark Office to determine whether its determination of patent term adjustment under 35 U.S.C. 154(b) is correct, and whether the applicant is entitled to reinstatement of reduced patent term adjustment. The information supplied to the United States Patent and Trademark Office by an applicant seeking a patent term extension under 35 U.S.C. 156 (§ 1.710 *et seq.*) is used by the United States Patent and Trademark Office, the Department of Health and Human Services, and the Department of Agriculture to determine the eligibility of a patent for extension and to determine the period of any such extension. The applicant can apply for patent term and interim extensions, petition the Office to review final eligibility decisions, withdraw patent term applications, and declare his or her eligibility to apply for a patent term extension.

Comments are invited on: (1) whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

■ For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.701 is amended by revising paragraph (a)(3) to read as follows:

§ 1.701 Extension of patent term due to examination delay under the Uruguay Round Agreements Act (original applications, other than designs, filed on or after June 8, 1995, and before May 29, 2000).

(a) * * *

(3) Appellate review by the Board of Patent Appeals and Interferences or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review. If an application is remanded by a panel of the Board of Patent Appeals and Interferences and the remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809, 4983–85 (1994), and a final decision in favor of the applicant under paragraph (c)(3) of this section. A remand by a panel of the Board of Patent Appeals and Interferences shall not be considered a decision in the review reversing an adverse determination of patentability as provided in this paragraph if there is filed a request for continued examination under 35 U.S.C. 132(b) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

* * * * *

■ 3. Section 1.702 is amended by revising paragraph (e) to read as follows:

§ 1.702 Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

* * * * *

(e) *Delays caused by successful appellate review.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued under a decision in the review reversing an adverse determination of patentability. If an application is remanded by a panel of the Board of Patent Appeals and Interferences and the remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision by the Board of Patent Appeals and Interferences as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii), a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii), and a final decision in favor of the applicant under § 1.703(e). A remand by a panel of the Board of Patent Appeals and Interferences shall not be considered a decision in the review reversing an adverse determination of patentability as provided in this paragraph if there is filed a request for continued examination under 35 U.S.C. 132(b) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

* * * * *

■ 4. Section 1.703 is amended by revising paragraph (f) to read as follows.

§ 1.703 Period of adjustment of patent term due to examination delay.

* * * * *

(f) The adjustment will run from the expiration date of the patent as set forth in 35 U.S.C. 154(a)(2). To the extent that periods of delay attributable to the grounds specified in § 1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed. The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704. The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation.

* * * * *

■ 5. Section 1.704 is amended by revising paragraph (d) to read as follows.

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(d) A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

* * * * *

■ 6. Section 1.705 is amended by revising paragraph (d) to read as follows:

§ 1.705 Patent term adjustment determination.

* * * * *

(d) If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

* * * * *

Dated: April 16, 2004.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 04–9144 Filed 4–21–04; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 126–0074b; FRL–7650–3]

Interim Final Determination That State Has Corrected a Deficiency in the Arizona State Implementation Plan, Arizona Department of Environmental Quality

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 Arizona Department of Environmental Quality (ADEQ) portion of the Arizona

State Implementation Plan (SIP) published elsewhere in today's **Federal Register.** The revisions concern ADEQ Rule R18–2–702.

DATES: This interim final determination is effective on April 22, 2004. However, comments will be accepted until May 24, 2004.

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 by appointment. 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.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

A copy of the rules may also be available via the Internet at *http://www.sosaz.com/public_services/Title_18/18–02.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 or *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 2002 (67 FR 59456), we published a full disapproval of ADEQ Rule R18–2–702 as revised locally on November 13, 1993 and submitted by the State on July 15, 1998. We based our full disapproval action on deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after October 23, 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 August 8, 2003, ADEQ adopted revisions to Rule R18–2–702 that were intended to correct the deficiencies identified in our limited disapproval action. On January 16, 2004, 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 September 23, 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 September 23, 2002, full 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 ADEQ Rule R18–2–702, 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

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with ADEQ Rule R18–2–702 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

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

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, 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 (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 (2 U.S.C. 1501 *et seq.*).

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, 5 U.S.C. 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 April 22, 2004. 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 June 21, 2004. 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: April 5, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–9040 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 218–0433a; FRL–7640–7]

Revisions to the California State Implementation Plan, Kern County 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 Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). The KCAPCD revisions concern stack sampling, standards for granting applications, and the emission of particulate matter (PM–10) from agricultural burning and prescribed burning. We are approving local rules that administer regulations and regulate emission sources under the Clean Air Act as amended (CAA or the Act).

DATES: This rule is effective on June 21, 2004 without further notice, unless EPA receives adverse comments by May 24, 2004. 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 or e-mail 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 copies of the submitted rule 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 rule revisions and TSDs 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.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301.

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, *petersen.alfred@epa.gov*.

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

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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 adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	108	Stack Sampling	07/24/03	11/04/03
KCAPCD	208	Standards for Granting Applications	09/17/98	10/27/98
KCAPCD	417	Agricultural and Prescribed Burning	07/24/03	11/04/03.

On December 23, 2003, the submittal of Rules 108 and 417 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On December

18, 1998, the submittal of Rule 208 was found to meet the completeness criteria.

B. Are There Other Versions of These Rules?

We approved KCAPCD Rule 108 into the SIP on August 10, 2001 (68 FR 52510), originally adopted on April 18, 1972. We approved KCAPCD Rule 208 into the SIP on September 22, 1972 (37 FR 19812), originally adopted on April 18, 1972. We approved KCAPCD Rule 417 into the SIP on September 4, 2003 (68 FR 52510), originally adopted on April 18, 1972.

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 the revisions to KCAPCD Rule 108 is to make the following change:

- Deleted is the obsolete section on rule effective date and compliance date.

The purpose of the revisions to KCAPCD Rule 208 is to make the following changes:

- Added is the requirement for the equipment to comply with Federal regulations.
- Added is the requirement to specify conditions, if required for compliance.
- Added is the requirement to submit a California Environmental Quality Act (CEQA) Indemnity Agreement, if required by the Control Officer.

The purpose of the revisions to KCAPCD Rule 108 is to make the following changes:

- Deleted is the exemption to allow open burning on no-burn days for agricultural operations in the growing of crops or raising of fowl or animals at altitudes above 3,000 feet.
- Deleted is the exemption to allow open burning on no-burn days at elevations over 6,000 feet.

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) and must not relax existing requirements (see sections 110(l) and 193). This applies to administrative Rules 108 and 208.

Section 189(a) of the CAA requires moderate nonattainment areas with significant PM–10 sources to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT). KCAPCD is a PM–10 maintenance attainment area that was previously PM–10 moderate nonattainment. The *PM–10 Attainment Demonstration Maintenance Plan and Redesignation Request,* KCAPCD (September 5, 2002) does not rely on Rule 417 for attainment, therefore fulfilling RACM/RACT is not required.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *General Preamble Appendix C3—Prescribed Burning Control Measures* (57 FR 18072, April 28, 1992).
- *Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* (EPA–450/2–92–003).
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992).
- *PM–10 Attainment Demonstration Maintenance Plan and Redesignation Request,* KCAPCD (September 5, 2002).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACM/RACT.

The TSDs have more information on our evaluation.

C. EPA Recommendation to Further Improve the Rules

The TSD describes an additional revision for KCAPCD Rule 108 that does not affect EPA's current action but is recommended for the next time the local agency modifies the rules.

D. 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 May 24, 2004, 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 June 21, 2004. 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 (Public Law 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 2004. 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: March 8, 2004.

Laura Yoshii,

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 paragraphs (c)(260)(i)(C) and (321)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(260) * * *

(i) * * *

(C) Kern County Air Pollution Control District.

(*1*) Rule 208, originally adopted on April 18, 1972, amended on September 17, 1998.

* * * * *

(321) * * *

(i) * * *

(B) Kern County Air Pollution Control District.

(*1*) Rules 108 and 417, originally adopted on April 18, 1972, amended on July 24, 2003.

* * * * *

[FR Doc. 04–9038 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA258–0442(B); FRL–7645–8]

Interim Final Action to Stay and Defer Sanctions Based on Attainment of the 1-hour Ozone Standard for the San Francisco Bay Area, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is taking interim final action to stay and defer the imposition of, respectively, offset and highway sanctions under the Clean Air Act (CAA) based on a finding that the San Francisco Bay Area (Bay Area) has attained the 1-hour ozone national ambient air quality standard (NAAQS). The finding of attainment is published elsewhere in today's **Federal Register.**

DATES: This interim final rule is effective on April 22, 2004. However, comments will be accepted until May 24, 2004.

ADDRESSES: Send comments to Ginger Vagenas, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *vagenas.ginger@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the public comments and the attainment finding docket (number C258–0442(B)) at our Region IX office during normal business hours by appointment. The Region IX office is located at the following address: Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

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

I. Background

On September 20, 2001 (effective October 22, 2001, 66 FR 48340), we published a partial approval and partial disapproval of the San Francisco Bay Area 1999 ozone attainment plan (1999 Plan) as submitted by the State on August 13, 1999. The plan was adopted locally by the Bay Area Air Quality Management District on June 16, 1999, by the Metropolitan Transportation Commission on June 17, 1999, and by the Association of Bay Area Governments on June 23, 1999. These agencies are referred to collectively as the co-lead agencies. We based our disapproval action on deficiencies in the attainment assessment, the motor vehicle emissions budgets, and the reasonably available control measure (RACM) demonstration. The disapproval action started a sanctions clock for imposition of offset sanctions 18 months after October 22, 2001, 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 October 24, 2001, the co-lead agencies adopted the San Francisco Bay Area 2001 Ozone Attainment Plan (2001 Plan) that was intended in part to correct the deficiencies identified in our partial disapproval action. On November 30, 2001, the State submitted the 2001 Plan to EPA. On July 16, 2003, we proposed approval of this submittal because we believed it corrected the deficiencies identified in our September 20, 2001, disapproval action. (68 FR 42174). Based on that proposed

approval, we took final rulemaking action to stay the imposition of the offset sanction and defer the imposition of the highway sanction that were triggered by our September 20, 2001, disapproval. 68 FR 42172, July 16, 2003. Elsewhere in today's **Federal Register** we are taking final action to approve the RACM demonstration and motor vehicle emissions budgets in the 2001 Plan. Therefore the sanctions clocks associated with our disapproval of those elements in the 1999 Plan are terminated.

On October 31, 2003, we published a proposed finding that the Bay Area had attained the 1-hour ozone NAAQS. 68 FR 62041. In that notice we explained that, when an area has attained the standard, certain CAA planning requirements designed to bring the area into attainment (including the requirement for an attainment demonstration) are no longer applicable and that, as a result, the State would no longer be required to submit SIP revisions to meet them. We also explained that if we subsequently determine that the Bay Area has violated the 1-hour ozone standard (prior to a redesignation to attainment [1]), the basis for the determination that the area need not make these SIP revisions would no longer exist.

II. EPA Action

Based on today's final finding that the Bay Area has attained the 1-hour ozone NAAQS, we are taking this final rulemaking action, effective on publication, to stay and defer imposition of CAA section 179 sanctions that were triggered by our September 20, 2001, disapproval of the attainment assessment in the 1999 Plan. As noted above, the requirement for an attainment demonstration is not eliminated; rather, it is only suspended for so long as the area continues to attain the standard. Should the Bay Area violate the 1-hour standard, EPA will revoke the finding of attainment and there will once again be an attainment demonstration requirement for the area. This stay and deferral of sanctions will therefore remain in effect only until such time as EPA revokes the finding of attainment and the subsequent planning process takes its course. Alternatively, if EPA redesignates the area to attainment status, the requirement for an attainment demonstration will be eliminated, and the sanctions associated with the earlier disapproval will be terminated.

EPA believes that notice-and-comment rulemaking on the stay and deferral of sanctions before the effective date of this action is impracticable and contrary to the public interest. We have determined through notice-and-comment rulemaking that the Bay Area has attained the 1-hour ozone NAAQS and that the requirement to submit an attainment demonstration has been suspended. Given the State is no longer subject to the requirement to correct the deficiency that triggered the sanctions clocks in the first place, it is not in the public interest to reimpose the offset sanction or initially impose highway sanctions. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to provide a continuous stay and deferral of sanctions during the time prior to redesignation, so long as the area continues to attain the standard. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action. If comments are submitted that change our assessment described in this final determination 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 redesignation to attainment, should redesignation occur.

Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

In summary, as a result of this action, the imposition of the offset sanction will continue to be stayed and the imposition of the highway sanction will continue to be deferred until we either redesignate the Bay Area to attainment or revoke our finding of attainment and the ensuing planning process takes its course.

III. Statutory and Executive Order Reviews

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

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

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

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

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

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

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

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary

[1] The redesignation of an area to attainment under CAA section 107(d)(3) is a separate process from a finding of attainment. A finding that an area has attained the 1-hour ozone standard does not redesignate the area to attainment for the 1-hour standard, nor does it guarantee a future redesignation to attainment.

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 April 22, 2004. 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 June 21, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 1, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–9140 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA258–0442(A); FRL–7645–7]

Determination of Attainment of the 1-Hour Ozone Standard; Determination Regarding Applicability of Certain Clean Air Act Requirements; Approval and Promulgation of Ozone Attainment Plan; San Francisco Bay Area, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the San Francisco Bay Area (Bay Area) ozone nonattainment area has attained the 1-hour ozone national ambient air quality standard (NAAQS) by the deadline required by the Clean Air Act (CAA), September 20, 2006. Based on this determination, we are also determining that the CAA's requirements for reasonable further progress and attainment demonstrations and for contingency measures for the 1-hour ozone standard are not applicable to the area for so long as the Bay Area continues to attain the 1-hour ozone standard.

In addition, EPA is approving the following elements of the 2001 ozone attainment plan for the Bay Area (2001 Plan): Emissions inventory, reasonably available control measures (RACM); commitments to adopt and implement specific control measures; motor vehicle emissions budgets (MVEBs); and commitments for further study measures.

In 2001, EPA disapproved certain components of the 1999 ozone attainment plan for the Bay Area: The RACM demonstration, the attainment demonstration, and the MVEBs. Because of this disapproval the 2 to 1 offset sanction under CAA section 179(b)(2) was imposed in the Bay Area on April 22, 2003. Based on the proposed approval of these elements of the 2001 Plan, EPA made an interim final determination that resulted in a stay of the offset sanction and deferral of the highway sanction. EPA's approval of RACM and the MVEBs in the 2001 Plan terminates the sanctions clock for those plan elements.

Based on the attainment determination for the Bay Area, elsewhere in this **Federal Register** EPA is taking interim final action to stay the offset sanction and defer the highway sanction triggered by the attainment demonstration disapproval for as long as the area continues to attain the 1-hour ozone standard because that plan requirement has been suspended.

DATES: Effective Date: This rule is effective on May 24, 2004.

ADDRESSES: You can inspect copies of the administrative record (docket number CA258–0442(A)) for this action at EPA's Region 9 office during normal business hours by appointment. The address is U.S. EPA Region IX—Air Division, 75 Hawthorne Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

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

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I. Background

Upon enactment of the Clean Air Act Amendments of 1990, the Bay Area was classified as a moderate nonattainment area for the 1-hour ozone NAAQS. 56 FR 56694 (November 6, 1991). EPA redesignated the Bay Area to attainment in 1995, based on then current air quality data (60 FR 27029, May 22, 1995), and subsequently redesignated the area back to nonattainment without classification on July 10, 1998 (63 FR 37258), following renewed violations of the 1-hour ozone standard. Upon the Bay Area's redesignation to nonattainment, we required the State to submit a state implementation plan (SIP) addressing applicable CAA provisions, including a demonstration of attainment as expeditiously as practicable but no later than November 15, 2000.

The Bay Area Air Quality Management District (District or BAAQMD), along with its co-lead agencies—the Metropolitan Transportation Commission and the

Association of Bay Area Governments—prepared a 1-hour ozone attainment plan, which was submitted to EPA by the California Air Resources Board (CARB) on August 13, 1999. On September 20, 2001 (66 FR 48340), we approved the emissions inventories, reasonable further progress (RFP) provisions, control measure commitments, and contingency measures in that plan. In the same rulemaking, we disapproved the remaining portions of the SIP, *i.e.*, the attainment demonstration, MVEB, and RACM demonstration, issued a finding that the area failed to attain by the applicable deadline, and set a new attainment deadline of as expeditiously as practicable but no later than September 20, 2006. The effective date of the final disapproval (October 22, 2001) started an 18-month clock for the imposition of sanctions pursuant to CAA section 179(a) and 40 CFR 52.31, and a 2-year clock for EPA to promulgate a federal implementation plan (FIP) under CAA section 110(c)(1). 62 FR 43796 (August 15, 1997). The Bay Area became subject to the 2 to 1 offset sanction under CAA section 179(b)(2) on April 22, 2003.

On November 30, 2001, CARB submitted the 2001 Plan for the Bay Area addressing the new attainment deadline. On February 14, 2002, we found the MVEBs in the 2001 Plan adequate. 67 FR 8017 (February 21, 2002). On July 16, 2003 (68 FR 42174), we proposed to approve the following elements of the 2001 Plan: Emissions inventory, RACM demonstration, attainment assessment, MVEBs, and commitments to adopt control measures and to adopt and submit a plan revision by April 15, 2004 based on new modeling. On the same date, we issued an interim final determination that the 2001 Plan corrects the deficiencies in the 1999 Plan, thereby staying the CAA section 179 offset sanction and deferring the imposition of the highway sanction triggered by our September 20, 2001 disapproval. 68 FR 42172.

On October 31, 2003 (68 FR 62041), we proposed to find that the San Francisco Bay Area ozone nonattainment area had attained the 1-hour ozone standard by its CAA mandated attainment date of September 20, 2006. Based on this proposed finding, we also proposed to suspend the attainment demonstration, RFP and contingency measure requirements of the CAA for the Bay Area for so long as the area continues to attain the 1-hour ozone standard.

On January 30, 2004, CARB withdrew the attainment assessment, the RFP demonstration, the contingency measures, and the technical correction to the attainment assessment (Appendix F) in the 2001 Plan from EPA's consideration as revisions to the Bay Area SIP.[1] In the same letter, the State also specifically requested that EPA approve the motor vehicle emissions budgets in the 2001 Plan.

II. Attainment Finding for the Bay Area

A. Attainment Finding

In this action, EPA is finalizing its proposed finding of attainment for the Bay Area. The 1-hour ozone NAAQS is 0.12 parts per million (ppm) not to be exceeded on average more than one day per year over any three-year period. 40 CFR 50.9 and appendix H. We determine if an area has attained the 1-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding three-year period.[2] We use all available, quality assured monitoring data and we generally base our determination of attainment or failure to attain on the area's design value as of its applicable attainment deadline. In this case, the attainment deadline (September 20, 2006) has not been reached, so we are making our attainment finding based on the Bay Area's current air quality data and design value, which demonstrate attainment of the 1-hour standard. See section II.E. for a discussion of consequences of future violations.

The design value for the Bay Area for 2001–2003 was 0.123 ppm, which is below the 0.12 ppm standard using the applicable rounding convention discussed below. No monitor in the Bay Area recorded an average of more than one exceedance of the 1-hour ozone standard per year during the 2001 to 2003 period. Documentation of the monitoring data and design value calculation can be found in the docket for this rulemaking.

Our October 31, 2003 proposed attainment finding was based on all available air quality data collected from the monitoring network, which we determined met our regulations for state air quality monitoring networks. On November 12, 2003, the District submitted an interim certification that the data had been quality assured.[3] On December 1, 2003, Jack Broadbent, Executive Officer/Air Pollution Control Officer, BAAQMD, sent a letter to Deborah Jordan, EPA, (12/1/03 Broadbent letter) transmitting the District's formal certification in accordance with 40 CFR part 58 that the ozone ambient air monitoring data submitted to EPA are complete and accurate. The quality assurance process did not result in any changes to the data.

Because the Bay Area's design value was below the 0.12 ppm 1-hour ozone standard and the area averaged one or fewer exceedances per year at each monitor for the 2001 to 2003 period, we find that the Bay Area attained the 1-hour ozone standard by its CAA mandated attainment deadline of September 20, 2006. Based on this final attainment determination, we are also determining that the CAA requirements for RFP, an attainment demonstration and contingency measures for the 1-hour ozone standard are not applicable to the Bay Area for so long as the area continues to attain the standard. For a discussion of EPA's policy and legal basis for suspending these requirements, see our proposed attainment determination at 68 FR 62044.

Finally, based on our final attainment determination, elsewhere in this **Federal Register**, we are taking interim final action to stay the offset sanction and defer the highway sanction for the attainment demonstration because that plan requirement has been suspended. The stay/deferral will remain in effect for as long as the area continues to attain the 1-hour ozone standard.

B. EPA's Responses to Comments on the Proposed Finding of Attainment

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from seven parties. We summarize the most significant comments and provide our responses below; the entire set of comments and responses can be found in the docket in a separate Response to Comment document (RTC).

1. Comments Regarding Timing of the Finding of Attainment

Comment 1: Several commenters expressed support for a determination that the Bay Area has attained the 1-

[1] See January 30, 2004 letter from Catherine Witherspoon, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, U.S. EPA Region 9. This letter is subsequently referred to as the 1/30/04 Witherspoon letter.

[2] See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994 (Berry memorandum). While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same procedures.

[3] See November 12, 2003 email from Mark Stoelting, BAAQMD, to Catherine Brown, EPA, and Catherine Brown's November 21, 2003 response.

hour ozone standard. Another commenter concurred with the determination that Bay Area's monitoring network meets or exceeds EPA's specified requirements. In contrast, other commenters pointed to the Bay Area's prior history of slipping back out of attainment following EPA action redesignating the area to attainment in 1995 and recent year-to-year differences in design values as a reason for exercising caution in making an attainment finding. One commenter stated that, in light of the small margin of attainment, EPA should scrutinize the foundation for the asserted finding of attainment.

Response: A determination that an area has attained the standard is based on an objective review of air quality data. The 1-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than one day per year over any three year period. A review of the data from the prior three years (2001–2003) indicates that the Bay Area has met this standard. 68 FR 62042–62043.

The redesignation of an area to attainment under CAA section 107(d)(3)(E) is a separate process from a finding of attainment. Unlike an attainment finding where we need only determine that the area has had the prerequisite number of clean years, a redesignation requires multiple determinations. Under section 107(d)(3)(E) these determinations are:

1. We must determine, at the time of the redesignation, that the area has attained the relevant NAAQS.

2. The state must have a fully approved SIP for the area.

3. We must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions.

4. We must have fully approved a maintenance plan for the area under section 175A.

5. The state must have met all the nonattainment area requirements applicable to the area.

2. Comments Regarding the Data on Which the Attainment Finding is Based

Comment 2: The data do not support a finding of attainment. The District previously reported two separate exceedances on July 10, 2002, of 160 parts per billion (ppb) and 151 ppb, respectively, and stated that EPA should recognize the July 10, 2002 reading of 151 ppb at 4 p.m. as a separate exceedance from the 160 parts per billion (ppb) exceedance from earlier that day. As of December 1, 2003, the District's website stated that the region experienced three violations of the 1-hour ozone NAAQS at Livermore in 2002.

Response: An area's ozone attainment status is determined by calculating the average number of days over a three-year period on which it exceeds the ozone standard. See 40 CFR 50.9(a) and 40 CFR part 50, Appendix H. Therefore, multiple hourly exceedances on any single day count as only one exceedance. The Bay Area's website apparently mistakenly counted a reading of 0.123 ppm at Livermore on August 9, 2002 as an exceedance of the 1-hour ozone NAAQS. As explained at length in the proposed finding of attainment (68 FR 62043, October 31, 2003), and discussed below (see response to comment 6), rounding conventions and the form of the standard dictate that values between 0.120 and 0.124, inclusive, are to be rounded to 0.12 parts per million.

Comment 3: According to EPA guidance, an attainment finding should be based on certified data, however, the proposal was published before the data were certified. EPA's guidance demands quality assured data from states to establish evidence of attainment. The EPA memorandum "Procedures for Processing Requests to Redesignate Areas to Attainment'' signed by John Calcagni, Director Air Quality Management Division, OAQPS, dated September 4, 1992 (9/4/92 Calcagni memo)[4] states that "[t]he data should be collected and quality-assured in accordance with 40 CFR 58 and recorded in the Aerometric Information Retrieval System (AIRS) in order for it to be available for the public to review.'' EPA has cited this memo as applicable authority for the proposed rulemaking, and cannot pick and choose portions as applicable and inapplicable without explanation. The Administrative Procedure Act (APA) and CAA direct that EPA's decision-making must be based on data and information in the record and available to the public, and the law of the Ninth Circuit clearly requires that when EPA acts on SIPs, it must comply with its own rules. *Delaney* v. *EPA,* 898 F.2d 687, 693 (9th Cir. 1990). The data and information purportedly supporting the proposed action are simply unavailable, or were unavailable during the comment period.

Response: Air quality data are available to EPA and the general public on a real-time basis from the District's website. EPA based its proposal on this publicly available monitoring data that indicated the Bay Area had attained the 1-hour ozone standard. While the data for 2003 had not yet been quality assured at the time of the proposal, the District maintains a monitoring network that meets or exceeds all applicable requirements. See 68 FR 62042–62043 and "System Audit of the Ambient Monitoring Program of Bay Area Air Quality Management District,'' available online at *http://www.epa.gov/region09/air/sfbayoz/tsd1003.pdf.* EPA had no reason to believe the quality assurance process would indicate there had been problems with the data and so proceeded with the proposed finding.

On November 12, 2003, the District notified EPA that it had quality-assured the data from the 2003 ozone season and submitted it to AIRS. See footnote 3. Thus the quality-assured data were accessible to the public on that date, *i.e.*, during the public comment period. The November 12, 2003 notification was followed by the 12/1/03 Broadbent letter, which confirmed that the data had been collected and quality assured in conformance with 40 CFR part 58. The quality assurance process did not result in any changes to the data. While the proposal was published shortly before the data were certified, this final rulemaking is based on data that were collected and quality assured in conformance with EPA regulations.

Comment 4: Improved air quality in the Bay Area is not the product of real, permanent, surplus, and enforceable emissions reductions, as required by the CAA and EPA policy and guidance. It came as a result of a significant economic downturn that reduced, temporarily, emissions from all sectors of the emissions inventory and the weather had not been particularly ozone conducive. Because recent Bay Area ozone levels result from a combination of temporarily favorable economic and meteorological conditions rather than documentation of the effectiveness of permanent and enforceable measures, an attainment finding is inappropriate and obligations for RFP, attainment demonstration and contingency measure should not be suspended in the Bay Area.

Response: The requirement to determine that clean air is the result of permanent and enforceable emissions reductions is a criterion for the redesignation of an area to attainment under CAA section 107(d)(3)(E). It need not be met for a finding of attainment or for the suspension of the associated RFP, attainment demonstration, and contingency measure requirements.

That aside, we believe that the finding of attainment itself addresses in part the

[4] This memo is available online at *http://www.epa.gov/ttn/naaqs/ozone/ozonetech/940904.pdf.*

concern about unusually favorable meteorological conditions. We have long recognized that meteorological conditions have a profound effect on ambient ozone concentrations. In setting the current 1-hour ozone standard in 1979, we changed the form of the standard, *i.e.*, the criterion for determining attainment, from a deterministic form ''no more than once per year'' to a statistical form ''when the expected number of days per year is less than or equal to one'' over a three-year period in order to properly account for the random nature of meteorological variations. The three-year period for averaging the expected number of exceedances was a reasoned balance between evening out meteorological effects and properly addressing real changes in emission levels. See the proposed and final actions promulgating the current 1-hour ozone standard at 43 FR 26962, 26968 (June 22, 1978) and 44 FR 8202, 8218 (February 8, 1979).

Comment 5: Even if EPA has the discretion to dismiss SIP requirements upon a finding of attainment, it would be an abuse of discretion to dismiss these requirements without a finding that the reductions are permanent and enforceable in the circumstances of the Bay Area's recession and weather conditions. Given the narrow margin of attainment, it is inappropriate to relax the SIP through elimination of the RFP, attainment demonstration, and contingency measures requirements.

Response: As noted above, EPA is not dismissing or eliminating these requirements. Rather, we interpret the requirements for an attainment demonstration, an RFP demonstration and contingency measures as inapplicable to an area that has attained the standard, but only for so long as the area remains in attainment. The requirements will again apply if such an area violates the standard. In order to be redesignated to attainment of the ozone standard, the State will be required to demonstrate, among other things, that the reductions contributing to the attainment record are permanent and enforceable, and that atypical weather conditions were not responsible for the improvement in air quality. CAA section 107(d)(3)(E)(iii).

Comment 6: EPA's methodology for rounding off conflicts with Congress's intent that 0.12 ppm should be read as 0.120 ppm, as evidenced by section 181 of the CAA, at Table 1. See also 40 CFR 50.9, which states that the equivalent unit for the standard is 235 ug/m^3. (Livermore's design value is 245 ug/m^3). Finally, the specific regulation for the ozone standard contains no provision for rounding off, unlike the regulation for CO. (Compare 40 CFR 50.9 with 40 CFR 50.8(d)).

Response: In our proposed finding of attainment, we explained that the 1-hour ozone NAAQS is 0.12 parts-per-million; it is not expressed in parts-per-billion, nor does it contain three digits.[5] Because air quality monitors and models express results in three digits, EPA applies the established rounding convention to determine whether the measurements meet or exceed the standard. Under the rounding convention, 0.005 rounds upward and 0.004 rounds downward, so that a 0.124 parts per billion (ppb) ozone level meets the NAAQS of 0.12 ppm, while a 0.125 parts per billion (ppb) ozone level rounds up to 0.13 ppm and thus exceeds the NAAQS. The use of rounding neither changes the NAAQS nor relaxes it.

The commenter's reliance on the design values set forth in Table 1 of section 181(a)(1) is misplaced. These design values are used to classify nonattainment areas, not to determine whether an area has attained the standard. See *American Trucking Associations, Inc.* v. *EPA,* 175 F.3d 1027, 1047 (D.C. Cir. 1999) (''* * * although the numbers in the classification table are based upon the 0.12 ppm ozone NAAQS, they are neither equivalent to nor a codification of the NAAQS.'').

EPA's procedure for calculating the design value for classification purposes is different from the analysis used for purposes of determining attainment. Under EPA's classification procedures, it is possible for an area that lacks a full set of monitoring data to be designated nonattainment and to have a design value of less than 0.125 parts per billion (ppb). Under these circumstances, the area would be classified as a marginal nonattainment area. See Memorandum from William G. Laxton dated June 18, 1990, ''Ozone and Carbon Monoxide Design Value Calculations'' (Laxton Memo), available at *http://www.epa.gov.ttn/naaqs/ozone/ozonetech/laxton.htm.* The procedures set forth in the Laxton Memo constitute the ''interpretation methodology issued by the Administrator most recently before November 15, 1990.'' Finally, the translation of the standard from ppm to ug/m3 is provided for informational purposes only and does not constitute an alternative form of the standard.

3. Comments Regarding the Impact of an Attainment Finding on the 2001 Plan and on Air Quality in the Bay Area

Comment 7: EPA should direct the District to include in the next SIP submittal a safety margin of additional emissions reductions to compensate for the narrow margin of attainment. EPA should also mandate that the 2004 SIP contain sufficient contingency measures to achieve emissions reductions totaling 3% of the emissions inventory should the region experience a subsequent violation. See ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990'' (General Preamble), 57 FR 13510–11, April 16, 1992. EPA should institute extraordinary measures to respond immediately in the event of a future violation. The Bay Area's design value, which is just 2 parts per billion (ppb) below the attainment level, indicates that contingency measures must be included in the upcoming SIP. Only the requirement of federally enforceable contingency measures can provide any reasonable assurance that air pollution control efforts and emissions reductions will continue aggressively in the likely event that the area subsequently exceeds the 1-hour ozone standard once again. EPA should change course and take final action on the 2001 SIP as submitted and require appropriate emissions inventory adjustments to incorporate the effect of episodic control measures and reduced emissions activity from the economic recession experienced during modeled episode days.

Response: As noted above, our determination that the Bay Area has attained the standard is based on an objective review of air quality data. No information has been presented that casts doubt on the accuracy of the data, therefore we are proceeding with our finding of attainment. Our guidance provides for the suspension of the attainment demonstration, RFP and contingency measure requirements applicable to the Bay Area upon such a finding.[6] In our proposed action on the

[5] *See* 40 CFR 50.9(a) and footnote 8 of the October 31, 2003 proposal (68 FR 62043). Also see ''Guideline for the Interpretation of Ozone Air Quality Standards.'' U.S. Environmental Protection Agency, Office of Air, Noise and Radiation, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, January 1979, EPA–450/4–79–003, OAQPS No. 1.2–108. In the 1979 guidance document, EPA states, ''[i]t should be noted that the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of .12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, .125 ppm is the smallest concentration value in excess of the level of the standard.'' This document is available on line at *http://www.epa.gov/ttn/naaqs/ozone/ozonetech/guide-o3.htm.*

[6] Memorandum from John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, entitled ''Reasonable Further Progress, Attainment

2001 plan, we proposed to approve as part of the attainment assessment the commitment by CARB and the co-lead agencies to submit a SIP revision by April 15, 2004 (68 FR 42181, July 16, 2003). Consistent with the suspension of the attainment demonstration requirement, the State has withdrawn the commitment in the 2001 plan to submit a 2004 SIP revision from EPA consideration.[7] Therefore EPA cannot act on this commitment and, as a result, there is currently no federally enforceable requirement for a 2004 SIP.

The co-lead agencies have, however, expressed their intent to shift their focus to developing a maintenance plan to support a redesignation request if EPA finalizes its finding of attainment. Should the Bay Area violate the 1-hour standard prior to redesignation, the attainment demonstration, RFP and contingency measure requirements will be once again imposed. Also note that, among other things, an approvable maintenance plan must include contingency measures that are designed to promptly address a violation of the standard. Finally, even without the adoption of additional measures, ozone precursor emissions in the Bay Area will continue to decline as a result of previously adopted state, local, and federal measures. Between 2003 and 2006, emissions of oxides of nitrogen (NO_X) will decline 81 tpd and volatile organic compound (VOC) emissions will decline 52 tpd. 2001 Plan, p. 32–33. These numbers do not include additional reductions to be achieved by the implementation of Smog Check 2 in the Bay Area, which was mandated by the California legislature after adoption of the 2001 Plan.

Comment 8: While EPA's Notice of Proposed Rulemaking on the determination of attainment specified three SIP elements that "no longer apply to the Bay Area'' EPA did not elect to change or withdraw the District's outstanding enforceable commitment to secure 26 tpd of additional VOC emissions reductions. In light of the data indicating attainment, there could be some question whether all of the enforceable commitments remain valid, but EPA did not in the Notice of Proposed Rulemaking, authorize the rescission of the commitment to achieve an additional 26 tpd of reductions. Given the restatement of commitment by State and local agencies and EPA's failure to specify which, if any of the State's prior "enforceable commitments'' should not be included in the 2004 mid-course review, the District must completely fulfill its "enforceable commitments'' as pledged as part of the 2001 SIP submittal package. EPA has endorsed this concept in the proposed 8-hr implementation policy. Other commenters stated that EPA should expressly determine that the 26 tpd reduction is no longer necessary for the Bay Area to reach attainment.

Response: In our proposed finding of attainment, we discussed the CAA requirements that would be suspended should we finalize the proposal. 68 FR 62044. Those requirements are the RFP, the attainment demonstration, and contingency measure requirements. The suspension of these requirements, and our rationale supporting it, apply so long as the area continues to attain the 1-hour ozone NAAQS. Consistent with the suspension of the attainment demonstration requirement, the State has withdrawn the attainment assessment in the 2001 Plan, which includes the associated commitments to undertake a mid-course review and to achieve additional reductions as necessary to attain the 1-hour ozone standard. See 1/30/04 Witherspoon letter. A mid-course review, the purpose of which is to evaluate progress toward attainment, and a commitment to adopt the measures necessary to attain the standard are unnecessary in an area that has attained the standard. Finally we note that our final implementation guidance for the 8-hour standard has not yet been issued.[8]

Comment 9: A loss of progress could occur as a result of a finding of attainment. The proposed finding of attainment provides an incentive for areas to defer SIP preparation in hopes that they might achieve clean data before the deadline to perform a deferred SIP element preparation arrives. Part of the State's rationale for employing the mid-course review was the absence of competent modeling to demonstrate attainment in the Bay Area. EPA's proposed action undermines the State's prior commitment to use the more technically robust CCOS[9] model and more recent data to both model attainment in the Bay Area and quantify the effect of Bay Area emissions upon downwind district attainment. As the District has finally developed a model through the CCOS process, EPA must insist on the completion of the modeling exercise in the 2004 mid-course review SIP to identify issues associated with the federal 1-hour ozone standard, the state ozone standard, the 8 hour federal ozone standard, and transport issues.

Response: We disagree with the commenter's assessment of the impact of the attainment finding. The State and the co-lead agencies have all acknowledged the need to address the state ozone standard, the federal 8-hour standard, and downwind transport of air pollution and have pledged to continue their efforts.[10] Despite the commenters' concerns, work on the CCOS modeling does not appear to have slackened. In fact, given the technical challenges, EPA is satisfied that work is progressing as quickly as could be expected. Should the Bay Area once again violate the standard, new modeling based on CCOS data would be available to support an attainment demonstration. In addition, much of the work being done to prepare a maintenance plan and to prepare the state clean air plan will be transferrable to the nonattainment requirements that would once again apply.

Comment 10: The steps and delays that are embedded in EPA's proposed approach in the event of a future exceedance verify that EPA's future actions will be ineffective at bringing the region back onto the path of true attainment. EPA should make a commitment in its final notice to act immediately upon the observance of a single Livermore violation because, even if the EPA were to move swiftly, it could take three years to get a new attainment plan in place (6 months for rulemaking, 12 months for plan submittal, 18 months to act). Commenters fear that EPA will wait until the end of the ozone season, then

Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995 (*http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf*). This memo is subsequently referred to as the "Clean Data Policy'' or the "Seitz memo.''

[7] 1/30/04 Witherspoon letter.

[8] On June 2, 2003, EPA published in the **Federal Register** a proposed rule to implement the 8-hour ozone NAAQS. 68 FR 32803.

[9] In an effort to establish a more reliable database for ozone analysis, the Central California Ozone Study (CCOS), a large field measurement program, was conducted in the summer of 2000.

[10] In the District's October 16, 2003 letter to Catherine Witherspoon, CARB (10/16/03 Norton letter), Executive Officer William Norton states that the District "want[s] to reduce local ozone and transport, and to maintain progress toward the state standard.'' In a January 16, 2004 letter to Catherine Witherspoon, CARB (1/16/04 co-lead agencies letter), the directors of the co-lead agencies recognize that they "have a continuing obligation to reduce emissions further in order to attain and maintain all national ambient air quality standards and to make expeditious progress toward California standards.'' They state their commitment to "continuing [their] ozone control program in order to reduce ozone levels in the Bay Area and to address transport to downwind regions.'' In closing, they acknowledge the "need to make progress toward the California 1-hour standard, address transport to downwind regions, and meet the national 8-hour ozone standard.'' In the 1/30/04 Witherspoon letter, the State recognizes "the importance of a continuing commitment to further emission reductions that will * * * contribute to better air quality in downwind areas.''

await quality assured data, which would add 12 months to the process. Commenters request that EPA specify the protocol for making a determination of a violation in the event of an exceedance [at Livermore] in July, 2004.

Response: As described in the proposed rule, should the Bay Area violate the 1-hour standard prior to EPA redesignating the area to attainment, we will notify the State that we have determined that the area is no longer attaining the 1-hour standard. We will also provide notice to the public in the **Federal Register** and will at that time indicate what pertinent SIP provisions apply and when a SIP revision addressing those provisions must be submitted. The public will have an opportunity to comment on our determinations. In the event of an exceedance, EPA will work closely with the District to facilitate prompt quality assurance of the data. We also note we would not be precluded from initiating the above process in advance of submittal of quality assured data. In setting the due date for submittal of the SIP revisions, EPA will consider all the relevant circumstances. For example, should the Bay Area violate the 1-hour standard, EPA will take into account the history of the area and the date on which the Bay Area violates the 1-hour standard.

Comment 11: The CAA states that an area shall be classified as nonattainment if the area contributes to ambient air quality in a nearby area that does not meet the federal standard (CAA section 107(d)(1)(A)(i)). Activities in the Bay Area that generate ozone precursors translate into substantial contributions to ozone nonattainment status in the Sacramento Valley and San Joaquin Valley air basins; CARB has concluded that pollution generated in the Bay Area has a significant, and at least in one case, overwhelming impact on the Sacramento region.

Another commenter noted that the federal CAA and case law establish that downwind ozone transport concerns are an appropriate basis to deny designation of ozone attainment status to an upwind area even if monitoring limited to the upwind area shows compliance. Air district boundaries established to regulate localized pollutants cannot be used to ignore adverse effects which emanate beyond these boundaries when highly mobile pollutants such as ozone precursors are involved. Until EPA takes regulatory action to designate the Bay Area nonattainment for the 8-hour ozone standard it is premature to rely on that designation to deal with as yet unresolved transport issues. Because the Bay Area plan has not addressed transport contribution to downwind areas it is premature to relieve the area of the nonattainment designation and reasonably available control technology (RACT) and other requirements that are needed to demonstrate attainment in the downwind areas.

Response: CAA section 107(d)(1)(A)(i) applies to the submission by state governors of initial designations following promulgation of new or revised standards and is thus unrelated to determinations of attainment. Similarly, the cases cited [11] concern the permissible scope of EPA's authority in redesignating areas from nonattainment to attainment. Moreover, in determining whether an area has attained the 1-hour ozone standard, EPA does not evaluate whether it meets all other requirements of the Act. Thus, while EPA does interpret CAA section 110(a)(2)(A) and (D) to require States to address intrastate and interstate transport, EPA does not need to determine whether the State has regulated emissions from the Bay Area for purposes of transport in determining whether the Bay Area has attained the ozone standard. To the extent that emissions from the Bay Area significantly contribute to nonattainment or maintenance of the ozone standard in downwind areas, the State will need to address those contributing emissions in the context of an attainment demonstration for the downwind areas. Further, as a result of our attainment finding, certain CAA requirements are suspended but will once again be imposed should the Bay Area violate the standard prior to redesignation. As described in our response to comment 1, a redesignation to attainment requires that several additional requirements be fulfilled. Finally, note that in today's action, EPA is approving the RACT control measure commitments included in the 2001 Plan.

Comment 12: Under the Clean Data Policy, EPA must ensure that the Bay Area submits the CCOS local attainment demonstration and regional assessment of the influence of Bay Area transported air pollution. (Seitz memo, page 7.)

Response: The Seitz memo provides that "[d]eterminations made by EPA in accordance with the [Clean Data Policy] would not shield an area from EPA action to require emission reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has the authority under the Act (* * * section 110(a)(2)(A) in the case of intrastate areas) to require emissions reductions if necessary and appropriate to deal with transport situations.'' For many years, the effort to address transport has been stymied by an inability to define the transport problem due to lack of data. At the present time, the Bay Area District, several downwind areas, and CARB are engaged in an effort to refine modeling based on the CCOS. Once complete, the modeling should provide a better understanding of the degree to which air pollution generated in the Bay Area affects air quality in downwind areas. The co-lead agencies and CARB have acknowledged the need to address transport [12] in addition to their obligations to achieve the state 1-hr and new federal 8-hr ozone standard. As a result, EPA fully expects that diligent efforts to finalize CCOS modeling will continue and that those results will be used to revise SIPs if appropriate.

Comment 13: Commenters expressed concern with the fate of the motor vehicle emissions budgets submitted with the 2001 Plan,[13] and the conformity and emissions consequence if those budgets were not approved. One commenter noted that the conformity budgets are an important tool to limit transported emissions from the Bay Area and argued that the budgets must remain in effect, if not be made more stringent, to further mitigate transported emissions. Another commenter urged that EPA maintain MVEBs consistent with attainment during periods of normal economic activity until the area has qualified for redesignation.

Reponse: As noted above and discussed in section IV below, the co-lead agencies and CARB have requested that EPA fully approve the motor vehicle emissions budgets in the 2001 Plan. In this action, EPA is finalizing its approval of those budgets.

C. Applicability of Clean Air Act Planning Requirements in Areas Attaining the 1-Hour Ozone Standard

When we redesignated the Bay Area back to nonattainment in 1998, we concluded that the area became subject to the provisions of subpart 1 rather than subpart 2 of part D of the Clean Air Act. 63 FR 37258 (July 10, 1998). CAA

[11] *Illinois State Chamber of Commerce* v. *USEPA,* 775 F.2d 1141 (7th Cir. 1985) and *State of Ohio* v. *Ruckelshaus,* 776 F.2d 1333 (6th Cir. 1985).

[12] See footnote 10.

[13] On February 14, 2002, EPA found the motor vehicle emission budgets in the 2001 Plan to be adequate for transportation conformity purposes. EPA's letter to CARB conveying the adequacy finding, along with responses to public comments regarding the adequacy of the budgets can be found at *http://www.epa.gov/region09/air/sfbayoz/#0202.*

subpart 1 at section 172(c) requires states to submit plans with certain revisions that are tied to the attainment demonstration:

1. A demonstration that the plan will result in annual incremental reductions in emissions of ozone precursors for the purposes of ensuring attainment of the 1-hour ozone standard by 2006. This provision is known as the reasonable further progress (RFP) demonstration or plan, CAA section 172(c)(2);

2. A demonstration that the plan will result in attainment of the 1-hour ozone standard as expeditiously as practicable but not later than September 20, 2006, CAA section 172(c)(1);

3. Contingency measures that will be undertaken if the area fails to make reasonable further progress to attain the standard by the applicable attainment date, CAA section 172(c)(9).

We believe that it is reasonable to interpret the CAA to not require these provisions for ozone nonattainment areas that are determined to be meeting the 1-hour ozone standard. We discuss our reasoning in the Seitz memo, in the proposal for this action, and below in our response to comments.[14]

We received comments on the proposed attainment determination regarding the applicability of certain CAA planning requirements to the Bay Area. The comments and our responses are summarized below.

D. EPA Responses to Comments Regarding Applicability of Clean Air Act Requirements

1. Comments Regarding EPA's Clean Data Policy

Comment 14: Several commenters concurred with EPA's determination that attainment demonstration, contingency measures and RFP requirements do not apply. In contrast, a number of commenters contend that EPA has no authority in this situation to eliminate SIP requirements without a formal redesignation. Congress created a process for determining whether a region should be treated differently as to its requirements for planning and pollution controls if the region monitored attainment. That process is called redesignation under section 107(d)(3) of the Act. Redesignation actions involve a more complete and robust State submittal, and have the additional security of data collected during the period between the end of the attainment demonstration period and EPA's action on redesignation. Under the Act designation determines the applicable controls. There is nothing in the CAA that explicitly states that upon only a finding of attainment, the EPA can jettison SIP requirements. EPA says it is implicit, but that would require splitting apart an explicit redesignation process. Congress did not provide for that, and such an action would frustrate the purposes of the Act and redesignation process.

Response: In today's action, we are finalizing our determination that the Bay Area has attained the 1-hour ozone standard by its statutory deadline of September 20, 2006 as demonstrated by three consecutive years without a violation. As a result, we are also finalizing our determination that certain Clean Air Act requirements are not applicable to the Bay Area. The statutory basis for finding that these planning requirements are not applicable is described in the proposal and in the Clean Data Policy. *See* 68 FR 62041, 62044—62045; Seitz memo at 2–5. Contrary to the commenter's assertion, we are not eliminating any applicable requirements. Rather, we have interpreted the requirements of sections 172(c)(1), 172(c)(2), and 172(c)(9) as not being applicable once an area has attained the standard, as long as it continues to do so. This is not a waiver of requirements that by their terms clearly apply; it is a determination that certain requirements are written so as to be operative only if the area is not attaining the standard. Our interpretation is consistent both with the CAA's goal of achieving and maintaining clean air, and with the concomitant policy goal of avoiding costly and unnecessary emission reductions, and, as mentioned above, has been upheld in the Tenth Circuit in *Sierra Club* v. *EPA*, 99 F.3d 1551.

2. Comments Regarding the Applicability of EPA Policies to the Bay Area

Comment 15: EPA cites *Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996) as authority for the waiver of CAA requirements. Several commenters, however, contend that the case was incorrectly decided. Further, commenters argue that the Bay Area is distinguishable from Utah in several respects:

In contrast to the 0.123 ppm design value in the Bay Area, the design value in Utah is 0.111 ppm, well below the 1-hour standard.

The emissions that achieved improved air quality were determined by the court to be enforceable (unlike the Spare the Air program).

The Bay Area is recognized to be a nonattainment area for the 8-hour ozone standard.

The Bay Area is an upwind district for transport purposes. The court observed that air quality controls designed to surpass the applicable ozone standard would be costly and unnecessary.

Response: In *Sierra Club*, the Tenth Circuit Court of Appeals upheld the rationale in the Seitz memo as it applies to moderate ozone nonattainment areas. There, pending completion of the redesignation process, and based on three years of air quality data, EPA found that two Utah Counties designated as nonattainment for ozone and classified as moderate had attained the ozone NAAQS. As a result, EPA determined that the CAA's moderate area requirements for attainment and RFP demonstrations, and contingency measures (sections 182(b)(1)(A) and 172(c)(9)) were inapplicable. Finding that this determination was a logical extension of EPA's original interpretation in the General Preamble, the Court accorded deference to EPA's statutory interpretation that once a moderate ozone nonattainment area has attained the NAAQS, the moderate area CAA requirements for RFP, attainment and contingency measures no longer apply. Id. at 1556. Although the Bay Area is a non-classified nonattainment area, there is no doubt that the analogous subpart 1 area provisions serve exactly the same purpose as the provisions at issue in *Sierra Club* for moderate areas. Thus the Court's reasoning in that case applies equally to the Bay Area situation. Finally, EPA expects that fact patterns will vary from one area to the next but we do not believe such variations undermine the legal and policy bases for our interpretation of the applicability of CAA requirements in areas that have attained the standard.

Comment 16: In a similarly situated area, EPA did not determine attainment until it was able to redesignate the area to attainment and thus its residents had assurance of maintenance in the form of a maintenance plan. See EPA's St. Louis rulemaking, 68 FR 25418, May 12, 2003.

Response: CAA section 179(c) provides that "[a]s expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator [of EPA] shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard

[14] We have also explained at length in other actions our rationale for the reasonableness of this interpretation of the Act and incorporate those explanations by reference here. *See* 61 FR 20458 (May 7, 1996) (Cleveland-Akron-Lorrain, Ohio); 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah); 60 FR 37366 (July 20, 1995) and 61 FR 31832–33 (June 21, 1996) (Grand Rapids, MI). Our interpretation has also been upheld by the U.S. Court of Appeals for the Tenth Circuit in *Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996).

by that date.'' See also CAA section 181(b)(2). Thus the statute provides for findings of attainment based on air quality. The Clean Data Policy provides for such findings prior to the attainment date applicable to a nonattainment area. The policy indicates that EPA's regional offices will conduct individual rulemakings concerning areas that have three consecutive years of clean data demonstrating attainment to make binding determinations that such areas have attained the standard and need not submit SIP revisions addressing the CAA requirements that are no longer applicable. Seitz memo, p. 6. Thus the timing of attainment findings is authorized by the statute and dictated by longstanding Agency policy.

Comment 17: EPA's Clean Data Policy only addresses subpart 2 authority. Since the Bay Area is designated nonattainment under subpart 1, it is not applicable to the Bay Area.

Response: EPA's Clean Data Policy specifically addresses the RFP requirement in CAA section 172(c)(as defined in section (171(1)) and the contingency measure requirement in section 172(c)(9). Both of these statutory provisions apply to the 2001 Plan. With respect to the attainment requirement, the policy addresses the attainment requirement in section 182 which does not apply to the Bay Area plan. However, the analysis of that requirement applies equally to the section 172(c)(1) attainment requirement that does apply to the 2001 Plan. See Seitz memo, pages 3–5.

Comment 18: EPA's action is not supported by EPA's adopted guidance and policy documents. Specifically, John Calcagni's October 28, 1992 memo entitled "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines' (10/28/92 Calcagni memo) is inconsistent with EPA proposed action on the specific issue of whether the Bay Area's SIP requirements may be relaxed at this stage. "States, however, are statutorily obligated to meet SIP requirements that become due any time before an area is actually redesignated to attainment. [. . .] Hence, if there is a failure of the State to meet a statutory deadline [and, ergo, a SIP commitment to mid-course review] for an area, (before EPA has redesignated the area as attainment), a finding of failure to submit should be made. This, in turn, begins the sanctions process.'' 10/28/92 Calcagni memo, pages 3–4. This properly describes how the Act works—areas must still meet all SIP commitments after a determination of attainment, but before the redesignation is complete. Otherwise there is a gap in SIP coverage that is irrational and illegal. Logically, since an area must meet all applicable part D SIP requirements, including section 172(c) elements, in order to gain redesignation, section 107(d)(3)(E), these SIP requirements must be present at the time of redesignation. It would make little sense to excuse their inclusion now, then to require their adoption immediately prior to redesignation. The SIP must be continually effective during the period between determination of attainment and redesignation. EPA cannot rewrite the Act and waive the otherwise applicable part D SIP requirements during this "gap'' period.

Response: The 10/28/92 Calcagni memo addresses the historical situation in which certain states were planning to submit redesignation requests prior to November 15, 1992 in an attempt to be exempted from implementing mandatory CAA programs due to start in November of that year (*e.g.*, oxygenated fuels program, stage II vapor recovery rules, etc.). The memo explains that while the approvability of a redesignation request is based on requirements in place on the date of the complete submittal, until the redesignation was finalized, states would be statutorily bound to implement those programs. The types of mandatory programs covered by the 10/28/92 Calcagni memo are distinguishable from the planning requirements suspended by a finding of attainment. In the Clean Data Policy, EPA has interpreted the attainment demonstration, RFP, and contingency provisions of the Act to be inapplicable to an area that is attaining the ozone standard as long as the area continues to attain or is redesignated to attainment.[15] This interpretation is based on the language and purpose of those provisions. By contrast, the requirements for mandatory programs addressed by the 10/28/92 Calcagni memo do not contain qualifying language tied to attainment, such as "for the purpose of ensuring attainment of the applicable ambient air quality by the applicable date.'' Compare, *e.g.*, stage II vapor recovery (section 182(b)(3)) with RFP (section 171(1)).

Comment 19: The 9/4/92 Calcagni memo indicates that the Bay Area retains its obligation to model attainment as required by the mid-course review commitment as part of its redesignation showing: "No such *supplemental* modeling is required for O3 non-attainment areas seeking redesignation'' (page 3, emphasis added). The term "supplemental'' reflects EPA's requirement that ordinary modeling of attainment, as required for all SIPS and which is contained in and was deferred by California's "enforceable commitment'' must still be provided. EPA explains the purpose for supplemental modeling, which applies with vigor to the initial modeling requirement as follows: "Modeling may be necessary to determine the representativeness of the monitored data. *Id.*, page 3. If the data should be supported by modeling for redesignation, it should similarly be supported by modeling to support the determination of attainment, particularly where the region's actual emissions inventory has been depressed by economic forces and the District stands at the cusp of finalizing the modeling it has postponed for over a decade. While commenters recognize that the 9/4/1992 Calcagni memo purports to address redesignation actions, they assert that EPA itself cites this guidance as authority supporting EPA's proposal to delete RFP, attainment demonstration and contingency measure requirements from the Bay Area SIP. 68 FR 62044.

Response: EPA disagrees that its reference to the 9/4/92 Calcagni memo somehow retroactively modifies the scope of that memo. The purpose of our reference to the memo was to illustrate the consistency of our position that RFP becomes unnecessary when an area attains the standard. On page 6, the memo states that the "requirements for reasonable further progress * * * will not apply for redesignation because *they only have meaning for areas not attaining the standard.*'' Emphasis added.

The 9/4/92 Calcagni memo states the following: "The state must show that the area is attaining the applicable NAAQS. There are two components involved in making this demonstration which should be considered interdependently. The first component relies upon ambient air quality data. * * * The second component relies upon supplemental EPA-approved air quality modeling. No such supplemental modeling is required for O3 (ozone) nonattainment areas seeking redesignation * * *'' (pages 2 and 3). This document explains that supplemental modeling may be needed, for example, in sulfur dioxide and carbon monoxide areas, where emissions are localized and a small number of monitors may not be representative of air quality (page 3). In contrast, ozone is not a localized

[15] See also 9/4/92 Calcagni memo at p. 6: "The requirements for reasonable further progress, identification of certain emissions increases, and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

pollutant, and the Bay Area has an extensive monitoring network consisting of 24 monitors operating each year from 2001 through 2003 as described in EPA's proposal at 68 FR 62043. Consistent with the language in the memo and the rationale in calling for modeling in some cases for some pollutants and not in other cases, modeling would not be required for redesignation of ozone areas. The memo should not be read to create a requirement for modeling in an area that has been determined to be attaining the ozone standard.

Finally, we reiterate that a finding of attainment does not delete CAA requirements. The requirements for an attainment demonstration, RFP, and contingency measures are suspended by the finding only as long as the area continues to attain the standard or until the area is formally redesignated.

E. Effects of the Attainment Finding on the Bay Area and of a Future Violation of the 1-Hour Ozone NAAQS

Based on our finding that the Bay Area is attaining the 1-hour ozone standard, we are finding that the State of California is no longer required to submit an RFP plan, an attainment demonstration, or contingency measures for the area.

The lack of a requirement to submit these SIP revisions will exist only as long as the Bay Area continues to attain the 1-hour ozone standard. If we subsequently determine that the area has violated the 1-hour ozone standard (prior to a redesignation to attainment), the basis for the determination that the area need not make these SIP revisions would no longer exist. Thus, a determination that an area need not submit these SIP revisions amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard.

Should the Bay Area begin to violate the 1-hour standard, we will notify California that we have determined that the area is no longer attaining the 1-hour standard. We also will provide notice to the public in the **Federal Register**. Once we determine that the area is no longer attaining the 1-hour ozone standard then California will be required to address the pertinent SIP requirements within a reasonable amount of time. We will set the deadline for the State to submit the required SIP revisions at the time we make a nonattainment finding. California must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance.

III. Approval of Bay Area 2001 Plan

A. Approval of the 2001 Plan

In this action, EPA is finalizing its proposed approval of the following elements of the 2001 Plan: The emissions inventories, RACM, commitments to adopt and implement specific control measures, the motor vehicle emissions budgets, and further study commitments. The commitments to adopt and implement specific control measures [16] are listed in Tables 1, 2, and 3 below, and the commitments to conduct further study of potential control measures, are listed in Table 4 below. We are approving a VOC motor vehicle emissions budget of 164.0 tons per day and a NO_X motor vehicle emissions budget of 270.3 tons per day, both for the year 2006.

TABLE 1.—NEW STATIONARY AND AREA SOURCE CONTROL MEASURES

2001 SIP No.	BAAQMD regulation No.	Source category	Adoption on date	Implementation date	Estimated VOC reduction (tpd), 2000 to 2006	Estimated NO_X reduction (tpd), 2000 to 2006
Measures To Be Adopted by the BAAQMD						
SS–11	8–3	Improved Architectural Coatings Rule	[17]2001	2003–2004	2.9	
SS–12	8–5	Improved Storage of Organic Liquids Rule	2002	2002	1.9	
SS–13	8–14 and 8–19	Surface Preparation and Cleanup Standards for Metal Parts Coating.	2002	2003	0.3	
SS–14	8–16	Aqueous Solvents	2002	2003	3.0	
SS–15	TBD	Petroleum Refinery Flare Monitoring	2003	2004	[18]TBD	
SS–16	8–18	Low-Emission Refinery Valves	2003	2004	TBD	
SS–17	8–10	Improved Process Vessel Depressurization Rule	2003	2004	0.1	
Total					8.2	0.0

TABLE 2.—NEW MOBILE SOURCE CONTROL MEASURE

2001 SIP No.	Source category	Request [19] date	Implementation date	Estimated VOC reduction (tpd), 2000 to 2006	Estimated NO_X reduction (tpd), 2000 to 2006
Measure To Be Requested by the BAAQMD					
MS–1	Motor Vehicle Inspection and Maintenance Program—Liquid Leak Inspection and Improved Evaporative System Test.	2002	2002–2003	4.0	
Total				4.0	0.0

[16] We are approving the adoption and implementation dates of the new measures and the total emissions reductions they are cumulatively projected to achieve. We are approving all dates, including those that have passed, in order to make the commitments enforceable by EPA and citizens under the CAA.

[17] For commitments in the plan that do not identify the month, as in Tables 1, 2, and 3, or the day of the month, as in Table 4, EPA interprets the deadline to be no later December 31st of the noted year or the last day of the month, respectively.

[18] At the time of plan adoption, the BAAQMD was not able to determine the amount of emissions reductions that could be achieved by adoption of rules implementing SS–15 and 16. The District

Continued

TABLE 3.—NEW TRANSPORTATION CONTROL MEASURES

2001 SIP No.	Control measure description	Description and implementation steps	Schedule	Estimated VOC reduction (tpd), 2000 to 2006	Estimated NO_X reduction (tpd), 2000 to 2006
TCM A	Regional Express Bus Program.	Program includes purchase of approximately 90 low emission buses to operate new of enhanced express bus services. Buses will meet all applicable CARB standards, and will include particulate traps or filters. MTC will approve $40 million in funding to various transit operators for bus acquisition. Program assumes transit operators can sustain service for a five year period. Actual emission reductions will be determined based on routes selected by MTC.	FY 2003. Complete once $40 million in funding pursuant to Government Code Section 14556.40 is approved by the California Transportation Commission and obligated by bus operators.	See Below	See Below.
TCM B	Bicycle/Pedestrian Program.	Fund high priority projects in countywide plans consistent with TDA funding availability. MTC would fund only projects that are exempt from CEQA, have no significant environmental impacts, or adequately mitigate any adverse environmental impacts. Actual emission reductions will be determined based on the projects funded.	FY 2004–2006. Complete once $15 million in TDA Article 3 is allocated by MTC.	See Below	See Below.
TCM C	Transportation for Livable Communities (TLC).	Program provides planning grants, technical assistance, and capital grants to help cities and nonprofit agencies link transportation projects with community plans. MTC would fund only projects that are exempt from CEQA, have no significant environmental impacts, or adequately mitigate any adverse environmental impacts. Actual emission reductions will be determined based on the projects funded.	FY 2004–2006. Complete once $27 million in TLC grant funding is approved by MTC.	See Below	See Below.
TCM D	Additional Freeway Service Patrol.	Operation of 55 land miles of new roving tow truck patrols beyond routes which existed in 2000. TCM commitment would be satisfied by any combination for routes adding 55 miles. Tow trucks used in service are new vehicles meeting all applicable CARB standards.	FY 2001. Complete by maintaining increase in FSP mileage through December 2006.	See Below	See Below.
TCM E	Transit Access to Airports.	Take credit for emission reductions from air passengers who use BART to SFO, as these reductions are not included in the Baseline.	BART—SFO service to start in FY 2003. Complete by maintaining service through 2006.	See Below	See Below.
Total				0.5	0.7

TABLE 4.—FURTHER STUDY MEASURES

2001 SIP No.	Measure	Timeline for completion
FS–1	Study Potential for Accelerating Particulate Trap Retrofit Program for Urban Buses.	April 2002.
FS–2	Update MTC High Occupancy Vehicle Lane Master Plan	December 2002.
FS–3	Study Air Quality Effects of High Speed Freeway Travel	April 2003.
FS–4	Evaluate Parking Management Incentive Program	July 2003.
FS–5	Enhanced Housing Incentive Program	December 2003.
FS–6	Further Smog Check Program Improvements	December 2003.
FS–7	Parking Cash Out Pilot Program	December 2003.
FS–8	Refinery Pressure Vessels, Blowdown Systems, and Flares	December 2003.
FS–9	Refinery Wastewater Systems	December 2003.
FS–10	Organic Liquid Storage Tanks	December 2002.
FS–11	Marine Tank Vessel Activities	December 2003.

B. EPA's Responses to Comments on the Proposed Approval of the 2001 Plan

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from six parties. We are responding only to comments that pertain to the plan elements on which we are taking final action.

1. Comments on the Proposed Approval of the Emissions Inventory

Comment 20: The 2001 Plan's emissions inventory is inaccurate and may drastically underestimate precursor emissions. It contains errors that should have been known and could have been corrected at the time of submittal. It is evident that better, more current and accurate data were known to the District and available for incorporation into the 2001 Plan.

indicated that the reductions were to be determined (TBD). Therefore, the emission reduction total for SS–11 through SS–17 does not include reductions from these two measures.

Response: In order to be approvable, CAA section 172(c)(3) requires that the emissions inventory must be comprehensive, accurate, and current. We proposed to approve the emissions inventories in the 2001 Plan because, when evaluated in the context of the time in which they were developed, the inventories accurately incorporated the best available data. Subsequent to the submittal of the 2001 Plan, the District, in fulfillment of its 2001 Plan commitment to undertake several further study measures, collaborated with representatives of community groups and industry to study emissions and potential controls from certain sources of air pollution. Some of these studies revealed that there are flaws in the inventory. This was not particularly surprising—inventory data is constantly being reevaluated and refined—and, in general, the quality of technical data and analyses techniques will continually improve.

Once a plan has been adopted, EPA does not generally require plan elements such as emissions inventories and attainment demonstrations to be revisited and updated in response to new information.[20] There will always be situations when new, better information is on the horizon. Evaluating a plan element based on information that was not available at the time of submittal would create a moving target that would be impossible to meet. We do not, therefore, believe it is appropriate to disapprove the inventories based on data that was developed subsequent to submittal of the 2001 Plan.

The commenter fails to provide a concrete example of substantiated data that was available at the time of Plan adoption that is not included in the inventory. The version of EMFAC the commenter notes would have provided improved accuracy for motor vehicle emissions was not yet approved and available for use by the co-lead agencies when the 2001 Plan was being developed. See also section III.4. of the RTC.

Comment 21: EPA must specify a much more broad series of emissions inventory corrections in the 2004 SIP than those indicated in the proposed approval of the 2001 Plan. A commenter notes that reductions from Smog Check II, which was approved by the California legislature for the Bay Area in September 2002, need to be factored into the inventory. In addition, the commenter stated that, according to an article in the Los Angeles Times published on January 16, 2003, CARB has discovered errors in the South Coast Air Basin's emissions inventory and, because the Bay Area relies on many of the same CARB-derived emissions factors, those errors are therefore present in the Bay Area's inventory and must be corrected in the next inventory.

Response: We agree with the general point made by the commenter: inventories must be comprehensive, accurate, and current. In the notice of proposed rulemaking, we stated that if the findings in the draft technical assessment documents [21] regarding the inventory numbers are confirmed, the inventory submitted with the subsequent plan must reflect the new data. In addition, we noted that the inventories must be modified to incorporate data generated by the most recent model developed by CARB and accepted by EPA to determine emissions from motor vehicles. We did not intend to imply that those items can be considered an exhaustive list of future corrections because there is no way to predict the state of knowledge that will exist when the next inventory is submitted to EPA. Other refinements to the numbers that are made before the next inventory is submitted, including (but not limited to) any additional corrections and any adjustments to reflect the adoption of new regulations, must of course be included.

EPA finds the emissions inventory in the 2001 Plan to be very detailed. The emission categories are well documented, comprehensive, accurate, and current. The emissions inventory was prepared following the procedures in EPA guidance,[22] using either EPA emission factors found in AP–42 or other appropriate emission factors combined with Bay Area specific activity data to estimate emissions from each type of emissions source. This approach is the customary method used for preparing emissions inventories and the one required by EPA guidance. Emission inventories are not static but are constantly updated and renewed as new information, techniques, and studies are made available. EPA finds the emissions inventory in the SIP to be sufficiently detailed.

While we acknowledge that various inventory enhancements and corrections (including those to which the commenters allude) need to be reflected in future plan and budget updates, we believe that such inaccuracies, taken together, do not rise to such a level of importance that they justify our rejection of the current inventories and budgets as insufficient to provide an adequate framework for air planning.

2. Comments on the Proposed Approval of RACM

Comment 22: Commenters contend that the 2001 Plan fails to include many measures that should be considered RACM for the Bay Area. Further, they allege that EPA has not provided sufficient support for its proposed determination that the RACM analysis is adequate.

Response: CAA section 172(c))(1) requires nonattainment area plans to provide for the expeditious implementation of all reasonably available control measures. EPA's principle guidance interpreting the Act's RACM requirement is found in the General Preamble. See also "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors, November 30, 1999. Under our interpretation, a state does not need to adopt measures that would not advance the attainment date for the applicable standard.[23] The Bay Area's and the State's previously enacted control measures, along with the measures committed to in the 2001 Plan that have already been adopted and implemented, have resulted in improved air quality sufficient to qualify the Bay Area for a finding of attainment at the end of the 2003 ozone season. We therefore conclude that those controls reflect RACM and are approving the plan as meeting the RACM requirement of CAA section 172(c)(1).

3. Comments on the Proposed Approval of the Control Measure Commitments

Comment 23: The TCMs in the 2001 Plan are not approvable; they are impermissibly vague in their quantification of emissions reductions and are unenforceable. The 2001 Plan

[20] The U.S. Court of Appeals for the District of Columbia Circuit recently addressed a similar issue and affirmed EPA's position. *Sierra Club* v. *EPA,* 356 F.3d 296 (DC Cir. 2004).

[21] The District has prepared technical assessment documents (TADs) that describe its findings with respect to further study measures. The TADs can be viewed online at *http://www.baaqmd.gov/enf/RefineryFSM/refinery.asp.*

[22] See Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, EPA–454/R–99–006, April 1999, available online at *www.epa.gov/ttn/chief/ei_guide.html.*

[23] EPA's interpretation of the section 172(c)(1) RACM requirement has been upheld by the District of Columbia and Fifth Circuit Courts of Appeal in, respectively, *BCCA Appeal Group et al.* v. *EPA,* 348 F.3d 93 (5th Cir. 2003) and *Sierra Club* v. *EPA,* 294 F.3d 155 (DC Cir. 2002).

lumps the TCMs for the purposes of calculating emissions reductions. This complicates the legal enforceability of the measures, which renders the SIP and the TCMs unapprovable. Specific emissions reductions should be assigned to the TCMs.

Response: Since the emission reductions associated with most TCMs (*e.g.* demand management TCMs) are interdependent, it is not unusual for the impacts of TCMs to be assessed on a cumulative basis. This is particularly the case when, as here, the total emission reductions from the measures are small. The 2001 Plan provides an enforceable commitment to implement the TCMs to reduce VOC emissions by 0.5 tpd and NO_X emissions by 0.7 tpd between 2000 and 2006. The effectiveness of the TCMs in meeting this commitment will be documented in future conformity determinations. In order to show timely implementation as required in future conformity analyses (40 CFR 93.113) MTC must document that the TCMs are being implemented on schedule. Because the enforceable commitment is to achieve the cumulative emissions reductions by 2006, MTC must also document those reductions. MTC should also document the extent to which the implementation of the individual TCMs meets the identified levels. For example, for TCM A, MTC should identify the number of low-emission buses that were purchased.

4. Comments on the Downwind Transport of Air Pollution

Comment 24: CAA section 107(a) directs states to address intrastate transport ''by submitting an implementation plan for such state which will specify the manner in which the national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.'' The currently approved statewide SIP, the 1994 SIP, does not adequately address the topic. Given the universal acceptance of the fact that the Bay Area is an upwind contributor of air pollution to downwind areas that violate the ozone NAAQS, EPA may not lawfully approve the Bay Area SIP until it specifically addresses air pollution transport sufficiently to eliminate significant consequences to downwind Districts. The Bay Area SIP is not adequate unless and until it is part of a statewide SIP that comprehensively addresses air pollution transport.

Response: CAA section 107(a) simply affirms that each state has the primary responsibility for assuring the air quality within its borders and for determining how this goal is to be achieved. The commenter attempts to improperly transform this straightforward statutory provision into one that establishes a SIP requirement concerning intrastate transport. The nonattainment area plan requirements for the Bay Area are contained in sections 110(a) and 172(c). While EPA does interpret CAA section 110(a)(2)(A) to require states to address intrastate transport, they have significant latitude in how they choose to do so. Thus EPA, in acting on the 2001 Plan, does not need to determine whether the State has regulated emissions from the Bay Area for purposes of transport. To the extent that emissions from the Bay Area significantly contribute to nonattainment or maintenance of the ozone standard in downwind areas, however, the State will need to address those contributing emissions in the context of an attainment demonstration for the downwind areas.

5. Comments on Additional Plan Elements

Comment 25: The Clean Air Act requires that plans provide an affirmative demonstration of their authority and ability to implement the proposed plan. The District has failed to include such a demonstration in the SIP.

Response: In *BCCA Appeal Group,* the U.S. Court of Appeals for the Fifth Circuit agreed with the holdings of other federal circuit courts that the determination of what constitutes ''necessary assurances'' should be left to the discretion of EPA. The Fifth Circuit found that EPA was entitled to rely on a certification of legal authority to implement an ozone plan for Houston-Galveston by the State of Texas' legal counsel. Here, the State in its ''Completeness Checklist for SIP Revision: 2001 Bay Area Ozone Plan,'' (Checklist), section 2.1(c), has certified that it, as well as the District and MTC, have the necessary legal authority under State law to adopt and implement the plan. EPA has routinely accepted such checklists as evidence of the requisite legal authority and the Fifth Circuit ruling validates that Agency decision.

6. Comments on the Impact of the State Law and Court Orders

Comment 26: The District committed several violations of State law during its hasty plan promulgation process, and is currently subject to an order of the San Francisco County Superior Court to correct those violations. Statement of Decision and Order Thereon (Order), filed July 24, 2003, *Communities for a Better Environment, et al.* v. *Bay Area Air Quality Management District, et al.,* San Francisco County Superior Court Case No. 323849.[24] Until the District cures these violations, it is plainly without authority to implement the SIP or provide the assurances required by the Act. This provides an independent basis for EPA's disapproval of the Plan's adequacy. CAA section 110(a)(2)(E) and 40 CFR part 51, Appendix V, section 2.1(c) and (e).

Based on the California Public Records Act, Government Code section 6250, *et seq.*, the petitioners in the above case claimed that the District improperly destroyed files necessary to enforce the 2001 Plan and the District's rules. The parties settled the issue through a stipulated agreement and an order of the Court under which the District agreed to halt its practice of destroying enforcement records without notice and to institute practices assuring permanent preservation of District notices of violation and other enforcement file materials. However, some enforcement records were destroyed prior to the order. Because of the destruction of these documents, it is certain that at least some repeat violators will not be subject to the proper form of enforcement because records of their prior violations are unavailable. The District is therefore unable to provide assurance to EPA that it has the resources to implement the Plan and enforce its rules.

Response: The Court Order cited by the commenter requires the District to comply with California Government Code section 60203 prior to any destruction of certain public records. That section allows the destruction of such records if they are ''* * * photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document. * * *'' Thus, reproductions of these documents must be made before the originals can be destroyed.

The commenter's claim that the alleged destruction of certain of the District's enforcement files has resulted

[24] The Order of the San Francisco Superior Court has been appealed. *Communities for a Better Environment et al.* v. *Bay Area Air Quality Management District et al.*, First Appellate District Case Nos. A103991, A104179. EPA is aware that the parties have recently reached a settlement of these appeals that, if approved by the State courts, would result in the vacatur of the July 24, 2003 Order. However, because that vacatur has not yet occurred, EPA responds in this action to the public comments concerning the July 24, 2003 Order.

in the inability of the District to enforce its rules or implement the Bay Area plan is unsubstantiated. Assuming, arguendo, that the information in any files that may have been destroyed is necessary to the ongoing efforts of the District to implement the plan and enforce its rules, there are clearly numerous methods of preserving and recording data short of retaining reproductions of original documents. More importantly, even if some repeat violators are not treated as such as a result of missing records, that circumstance would not be sufficient to impair an overall enforcement program. Nor would it call into question the District's ability to otherwise implement its plan. The commenter has provided a conclusion but no support for it.

Comment 27: The District violated the California Environmental Quality Act (CEQA) by adopting the Plan without first preparing an adequate environmental impact report. The Court ruled that the District's environmental review documentation of the 2001 Plan was vague and that the District's actions did not accord Petitioners an adequate opportunity to comment on whether the low VOC solvents required by the adopted rules to implement SS–13 and SS–14 could have adverse impacts. The Court ordered the District to prepare an EIR for the adoption of the rules to implement SS–13 and SS–14. Thus EPA's action on the adequacy of the plan is premature and inappropriate under the Act and EPA's regulations. The Court's CEQA ruling clearly reflects the State Court's conclusion that the District failed to follow all the procedural requirements of the State's laws in conducting and completing the adoption and issuance of the plan, as required under 40 CFR Part 51, App V, 2.1(e).

Response: The commenter's contention has no merit. In this action, EPA is approving two control measure commitments in the plan known as SS–13 and SS–14. The Court's order on the CEQA claim does not, however, implicate these two control measure commitments. In addition to declining to set aside the District's adoption of the 2001 plan, the Court noted that, after its adoption of the plan, the District adopted rules to implement SS–13 and SS–14. The Court then ordered the District to prepare an EIR for the adoption of these rules. EPA in today's action is not approving the rules that are the actual subject of the Court's order. Therefore the CEQA defect addressed by Court's order is not relevant to EPA's action here.

Comment 28: The State Court has held that the 2001 Plan violates section 40233 of the California Health and Safety Code and ordered that the co-lead agencies develop a plan for public comment that accomplishes the necessary 26 tons of VOC emissions reductions no later than 60 days from the notice of entry of the order. Section 110(a)(2)(E) of the Clean Air Act prohibits approval of a state clean air plan if it violates state clean air laws.

Response: In addition to withdrawing the attainment assessment in the 2001 plan, the State has withdrawn the associated commitment by the co-lead agencies and CARB to adopt and submit measures to achieve 26 tpd of VOC emission reductions. As a result of our final attainment finding for the area and the resulting suspension of the CAA's attainment demonstration requirement for the Bay Area, these plan elements are not currently required. Therefore the State Court's holding that the 2001 plan violates section 40233 of the California Health and Safety Code is not relevant.

Comment 29: The CAA and EPA's regulations require assurances that the 2001 Plan and all of its elements were properly adopted. Several defects in the State's process and/or legal authority jeopardize the Plan and its implementation. CEQA was intended to be an environmental full disclosure statute and the EIR process necessarily requires consideration of alternatives and adoption of feasible alternatives or mitigation measures that substantially lessen or avoid adverse effects. The EIR process also promotes public involvement in agency decision making. The San Francisco Superior Court's finding that additional environmental disclosure and process is required is damning evidence of the flaws in the public review and involvement processes leading to plan adoption.

Response: EPA's completeness criteria require evidence that the State has the necessary legal authority under state law to adopt and implement the plan and evidence that the State followed all of the procedural requirements of its laws and constitution in conducting and completing the adoption/issuance of the plan. 40 CFR part 51, Appendix V, section 2.1(c) and (e). EPA regulations require public notice and hearings. 40 CFR 51.102. The commenter appears to believe that these requirements compel the State to comply with every aspect of all of its laws and regulations. That is not the case. The State need only demonstrate that it has the legal authority to adopt the plan and that it has followed all of the requirements in the State law and constitution that are related to adoption of the plan. The State has provided evidence that it has met these requirements. See Checklist, section 2.1(b) and (c). Contrary to the commenters's assertions, the State Court Order actually supports this conclusion: "The Court finds no violation of the Clean Air Act or other applicable authority occurred with respect to the Air Resources Board's adoption and transmittal of the 2001 [plan] to the Environmental Protection Agency.'' Order, p. 6.

7. Comments on the Interim Final Determination

Based on our proposed approval of the 2001 Plan (68 FR 42174), we made an interim final determination that California had corrected the deficiencies for which a sanctions clock began on October 22, 2001 (68 FR 42172, July 16, 2003). The comments we received and our responses are included in the RTC document.

IV. Effect of the Attainment Determination and 2001 Plan Action on Transportation Conformity

CAA section 176(c) requires that federally funded or approved transportation actions in nonattainment areas "conform'' to the area's air quality plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards.

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and to meet the air quality standards. These motor vehicle emissions levels are set in an area's attainment, maintenance and/or RFP demonstrations and are known as the "transportation conformity budgets.''

EPA and the Federal Highway Administration have developed guidance that indicates that budgets must be deemed adequate or approved before they can be used.[25] As stated previously, we found the motor vehicle emissions budgets in the 2001 Plan

[25] See EPA memorandum "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision'' (EPA420–F–99–025, May 14, 1999); available online at *http://www.epa.gov/otaq/transp/conform/policy.htm#030299*. This guidance was developed in response to a 1999 decision of the U.S. Court of Appeals for the District of Columbia Circuit that requires EPA to make certain changes in its conformity regulations (40 CFR 93.100 *et. seq*) to provide that budgets must be deemed adequate or approved, rather than simply submitted, in order to be used in conformity determinations. *Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641 (DC Cir. 1999). As a result, EPA interprets 40 CFR 93.109(c)(5)(ii) to apply to budgets that have been deemed adequate or have been approved, not merely submitted. EPA's current proposal to modify the conformity regulations (68 FR 62690, 62724, November 5, 2003) confirms this interpretation of the conformity rule.

adequate on February 14, 2002. 67 FR 8017. We are approving those budgets in this action.[26] Note that typically, under 40 CFR 93.118(e)(1), the motor vehicle emission budget, once approved, cannot be replaced by another unless the new budget comes from an approved SIP. However, as discussed in our proposed approval of the budgets in the 2001 Plan (68 FR 42174, 42181), EPA is approving the vehicle emission budgets in that plan only until new budgets developed with EMFAC2002 are submitted and found adequate for conformity purposes. See 67 FR 1464 (January 11, 2002). Budgets developed with EMFAC2002 will be more accurate than those developed using EMFAC2000.[27] Therefore, by limiting the duration of our approval of the EMFAC2000-derived budgets to the point when the updated budgets are found adequate, the updated budgets may be in place within a few months of their submission. For further discussion of the rationale for, and the effect of, this limitation, please see our promulgation of a limitation on motor vehicle emission budgets associated with various California SIPs, at 67 FR 69139 (November 15, 2002).

We believe that the State and co-lead agencies should move promptly to develop and submit a maintenance plan. The maintenance plan submittal should include, in addition to the maintenance year budgets, replacement 2006 budgets that are revised based on the latest approved version of EMFAC. Should EPA determine that the Bay Area is again subject to the 1-hour ozone attainment demonstration requirement as a result of a new violation of the 1-hour standard prior to redesignation, the State should submit a replacement 2006 budget with the attainment demonstration. Again, this replacement budget must use the latest approved version of EMFAC.

[26] In our proposed attainment finding we noted that "[i]f the attainment demonstration is withdrawn . . . the continued applicability of the budgets could be affected." 68 FR 62045. The State did not, however, withdraw the budgets in the 2001 Plan when it withdrew the attainment assessment but, in fact, specifically requested that EPA approve them. See 1/30/04 Witherspoon letter. Further, the State and District continue to implement the control measures that brought the area into attainment. Thus the final attainment finding has no effect on those budgets.

[27] Because EMFAC2000 has certain technical limitations, EPA approved it only for use in development of ozone motor vehicle emissions factors for SIP development and future conformity determinations in the San Francisco Bay Area. It was superior to prior models available for use in the area and the improved EMFAC2002 was not yet available. 68 FR 42181.

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. It also finds that the San Francisco Bay Area has attained a previously established national ambient air quality standard based on an objective review of measured air quality data. Finally, it determines that certain Clean Air Act requirements no longer apply to the San Francisco Bay Area because of the attainment finding. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 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 June 21, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 1, 2004.

Laura Yoshii,

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)(323) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(323) The following plan was submitted on November 30, 2001 by the Governor's designee.

(i) Incorporation by Reference

(A) Bay Area Air Quality Management District

(*1*) San Francisco Bay Area Ozone Attainment Plan for the 1-hour National Ozone Standard (Section 3: Emission Inventory; Section 5: Control Strategy, except subsection "Demonstrating Reasonable Further Progress''; Appendix B: Control Measure Descriptions; Appendix C: Reasonably Available Control Measure Analysis; Appendix E: Further Study Measure Descriptions;) adopted on October 24, 2001.

[FR Doc. 04–9142 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA 118–PLANa; FRL–7641–7]

Approval and Promulgation of Implementation Plans, Finding of Attainment, and Designation of Areas for Air Quality Planning Purposes; 1-Hour Ozone Standard, East Kern County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is finding that East Kern County, California, has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is approving the East Kern County 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions to the East Kern County portion of the California State Implementation Plan (SIP). Finally, EPA is redesignating the East Kern County area to attainment for the 1-hour ozone NAAQS.

DATES: This direct final rule is effective June 21, 2004, without further notice, unless we receive adverse comments by May 24, 2004. If EPA receives adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Please address your comments to: Dave Jesson, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or submit comments at *http://www.regulations.gov.*

You can inspect copies of the docket for this action at EPA's Region IX office during normal business hours. You can also inspect copies of the submitted SIP revision at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301–2370

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957, or *Jesson.David@epa.gov.*

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

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- 1. Finding of Attainment of the 1-Hour Ozone NAAQS
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III. Public Comment and EPA Action

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I. Background

A. East Kern County Designation, Classification, SIP, and Attainment Status

When the Clean Air Act (CAA) was amended in 1990, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem.[1] The East Kern County nonattainment area ("East Kern'') was designated under CAA section 107 as part of the San Joaquin Valley nonattainment area, and was classified under CAA section 181 as serious for the 1-hour ozone NAAQS. *See* 40 CFR 81.305 and 56 FR 56694 (November 6, 1991), designating the entire Kern County as part of the "San Joaquin Valley Area'' for ozone.

The Kern County Air Pollution Control District (KCAPCD) adopted a serious area plan, intended to demonstrate rate-of-progress (ROP) and attainment by the applicable deadline of November 15, 1999.[2] The California Air Resources Board (CARB) timely submitted the plan in 1994, along with the plan adopted by the San Joaquin Valley Unified Air Pollution Control District for the remainder of the San Joaquin Valley nonattainment area. We approved the ROP and attainment plans for the San Joaquin Valley, including the portion of the SIP applicable to Kern County, on January 8, 1997 (62 FR 1150).

[1] EPA's 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979 (44 FR 8202, February 8, 1979). On July 18, 1997, we promulgated a revised ozone standard of 0.08 ppm, measured over an 8-hour period. In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard. This action addresses only the 1-hour standard. Areas will be designated attainment or nonattainment of the 8-hour standard in 2004. Ground-level ozone can irritate the respiratory system, causing coughing, throat irritation, and uncomfortable sensations in the chest. Ozone can also reduce lung function and make it more difficult to breathe deeply, thereby limiting a person's normal activity. Finally, ozone can aggravate asthma and can inflame and damage the lining of the lungs, leading to permanent changes in lung function. More details on ozone's health effects and the ozone NAAQS can be found at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.*

[2] "Rate-of-Progress and Attainment Demonstration Plans for the Kern County Air Pollution Control District,'' adopted on December 1, 1994, and submitted on December 28, 1994, by the Governor's designee. Since 1992, KCAPCD jurisdiction extends only to the desert (*i.e.,* eastern) portion of Kern County, while the western portion of the County lies within the jurisdiction of the multi-county San Joaquin Valley Unified Air Pollution Control District.

On November 8, 2001 (66 FR 56476), we took these actions: (1) We determined that the San Joaquin Valley had not attained the 1-hour ozone standard by the 1999 deadline, reclassified the area to severe, and set a deadline for submittal of a SIP addressing the severe area requirements for the area; and (2) we separated the eastern portion of Kern County from the San Joaquin Valley area and extended the attainment deadline for this new serious area from 1999 to 2001, pursuant to CAA section 181(a)(5).[3] In our rulemaking, we noted that, ''if East Kern County does not record a violation in 2001, the area will be eligible for redesignation to attainment for the 1-hour ozone NAAQS, following submittal by the State and approval by EPA of a redesignation request and maintenance plan addressing the provisions of CAA section 175A.'' 66 FR 56481.

East Kern attained the 1-hour ozone NAAQS in 2001 and continued to record levels below the NAAQS during 2002 and 2003. Attainment is achieved when the average number of expected exceedance days per year is 1.0 or less for each monitor during a 3-year period. See discussion in Section II.B.1., below.

On May 1, 2003, KCAPCD adopted the Ozone Attainment Demonstration, Maintenance Plan and Redesignation Request (''maintenance plan'') to address the CAA section 175A provisions relating to 1-hour ozone maintenance plans. On December 9, 2003, CARB adopted and submitted specified elements of the maintenance plan, and requested that we approve these elements and redesignate the area to attainment for the 1-hour ozone NAAQS. CARB specifically requested that we approve the following elements of the plan:

(a) Appendix A containing ambient air quality data;

(b) Appendix B containing emissions inventory data for the 1999 attainment year and future years demonstrating that East Kern County's future ozone precursor inventory will not exceed the 1999 attainment year inventory;

(c) Chapter 6 containing contingency measures; and

(d) Table 5–2 containing motor vehicle emissions budgets.

B. Clean Air Act Provisions for Maintenance Plans

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must provide for continued maintenance of the applicable NAAQS for at least 10 years after the area is redesignated to attainment (CAA section 175A(a)). To address the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of a violation, and must include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area (CAA section 175A(d)).

We have issued maintenance plan and redesignation guidance, primarily in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble,'' 57 FR 13498, April 16, 1992); a September 4, 1992 memo from John Calcagni titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni memo'' available at: *http://www.epa.gov/ttn/naaqs/ozone/ozonetech/940904.pdf*); a September 17, 1993 memo from Michael H. Shapiro titled ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992''; and a November 30, 1993 memo from D. Kent Berry titled ''Use of Actual Emissions in the Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas.''

The Calcagni memo provides that an ozone maintenance plan should address five elements: an attainment year emissions inventory (*i.e.,* an inventory reflecting actual emissions when the area recorded attainment, and thus a level of emissions sufficient to attain the 1-hour ozone NAAQS), a maintenance demonstration, provisions for continued operation of an appropriate air quality monitoring network, verification of continued maintenance, and contingency measures.

C. Clean Air Act Provisions for Redesignation

CAA section 107(d)(3)(E) allows for redesignation providing that: (1) We determine, at the time of redesignation, that the area has attained the NAAQS; (2) we have fully approved the applicable implementation plan for the area under section 110(k); (3) we determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal regulations, and other permanent and enforceable reductions; (4) we fully approve a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all nonattainment area requirements applicable to the area under section 110 and part D. We have provided guidance on redesignation in the General Preamble and in the guidance memos cited above.

II. EPA Review of the East Kern County Maintenance Plan and Redesignation Request and EPA Finding of Attainment

A. Maintenance Plan

As discussed above in Section I.A., CARB submitted the maintenance plan on December 9, 2003.[4] The plan consists of a single volume, including appendices on air quality data and projected emissions.

1. Emissions Inventory

The maintenance plan includes emissions inventories for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) for 1990, 1999, 2001, 2005, 2010, 2015, and 2020. Emissions forecasts for future years take into account projected growth and changes in control factors, using established State methodologies.[5] The emissions inventories were updated in March 2003, and are presented as emissions in tons per summer day using the State's most recent data for stationary, area, and mobile categories.

The inventories use current and accurate methodologies, emissions factors, and survey information. The onroad emissions inventories employ the new CARB motor vehicle emissions factor model, EMFAC2002, and the latest planning activity levels. On April 1, 2003 (68 FR 15720–15723), we

[3] As discussed in the proposed action (66 FR 27616, May 18, 2001), no exceedances of the 1-hour ozone standard were recorded in 1999 or 2000 in East Kern County. CAA section 181(a)(5) provides that, upon application by a state, EPA may extend the 1-hour ozone attainment deadline for up to two one-year periods if the state has complied with all requirements and commitments pertaining to the area in the applicable SIP, and no more than one exceedance of the NAAQS has occurred in the area in the year preceding the extension year. EPA approved the separation of East Kern County along the boundary proposed by CARB. This boundary is the same as the boundary between the jurisdictions of the Kern County and the San Joaquin Valley air districts, and generally follows the ridge line of the Sierra Nevada and Tehachapi Mountain Ranges. The precise description of the new boundary appears at 40 CFR 81.305.

[4] On December 18, 2003, we found that this submittal met the completeness criteria in 40 CFR 51 appendix V, including the requirement for proper public notice and adoption.

[5] The maintenance plan uses the term Reactive Organic Compounds (ROC) in place of the Federal terminology, VOC. The terms are essentially synonymous. Because VOC is the more common term, we use it in this notice.

published a **Federal Register** notice stating our conclusion that the EMFAC2002 emission factor model is acceptable for use in SIP development and transportation conformity. Because the inventories are current, accurate, and complete, we are approving them under CAA section 172(c)(3) and 175A.

2. Maintenance Demonstration

Original maintenance plans must show how the NAAQS will be maintained for the next 10 years following redesignation to attainment. This is generally performed by assuming that the emissions levels at the time attainment is achieved constitute a limit on the emissions that can be accommodated without violating the NAAQS. In the case of this plan, projected VOC and NO_X emissions through 2015 show continued attainment, since emissions levels of both of the ozone precursors are below 2001 levels. Table 1 below shows baseline and projected summer day emissions levels.

TABLE 1.—EAST KERN COUNTY MAINTENANCE DEMONSTRATION

[Annual average emissions in tons per day]

Year	VOC	NO_X
1999	14.44	36.48
2001	13.80	36.55
2005	13.01	36.37
2010	12.02	35.42
2015	12.58	36.49

Source: East Kern County Maintenance Plan, Appendix B

Maintenance is demonstrated since total emissions of the two ozone precursors decline from the attainment year inventories. Increasingly stringent California and Federal motor vehicle emissions standards and fleet turnover account for the bulk of the inventory reductions, and the remaining emissions reductions come from fully adopted, permanent, and enforceable State, local, and Federal regulations.

We are approving the maintenance demonstration under CAA section 175A(a), since the plan shows that emissions will remain below attainment levels due to the projected impact of fully adopted, permanent, and enforceable regulations.

3. Continued Ambient Monitoring

The maintenance plan needs to contain provisions for continued operation of an air quality monitoring network that meets the provisions of 40 CFR part 58 and will verify continued attainment. CARB's Executive Order G–03–057 includes a commitment that the State will "work with the Kern County Air Pollution Control District to ensure continued ozone air quality monitoring in the East Kern County nonattainment area, in accordance with 40 CFR Part 58, for at least ten years following redesignation of the area to attainment, in order to verify the attainment status of the area'' (page 5 of the Executive Order). This CARB commitment meets the continued monitoring provision, and we are approving it under CAA section 175A.[6]

4. Verification of Continued Attainment

The maintenance plan needs to show how the responsible agencies will track progress, and the plan should specifically provide for periodic inventory updates. The KCAPCD will meet this obligation through triennial updates to the area's attainment plan for the more protective State 1-hour ozone standard, which are mandated by the California Clean Air Act. These updates include assessments of the effectiveness of the control strategy, corrections for deficiencies in meeting progress requirements under State law, new emissions inventory data and projections, and summaries of monitored air quality data. The triennial updates will meet our provisions for verification of continued attainment. We are approving this provision under CAA section 175A.

5. Contingency Provisions

CAA section 175A(d) provides that maintenance plans include contingency provisions "necessary to assure that the State will promptly correct any violation of the standard.* * * Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.''

Table 6–1 of the maintenance plan lists KCAPCD contingency measures. These measures are listed below in Table 2, "Contingency Measures.''

TABLE 2.—CONTINGENCY MEASURES SOURCE: EAST KERN COUNTY MAINTENANCE PLAN, TABLE 6–1

Rule	Title	Implementing agency	Ozone pre-cursor
422.1	Solid Waste Landfills	KCAPCD	VOC.
New	Coatings-Aircraft and Aerospace Exterior	KCAPCD	VOC.
New	Electronics Manufacturing	KCAPCD	VOC.
New	Commercial Charbroiling	KCAPCD	VOC.
425	Stationary Gas Turbine Engines	KCAPCD	NO_X.
425.3	Portland Cement Kilns	KCAPCD	NO_X.
425.1	Hot Mix Asphalt Batch Plants—Combustion	KCAPCD	NO_X.
425.2	Industrial & Commercial Package Boilers	KCAPCD	NO_X.
427	Stationary Piston Engines	KCAPCD	NO_X.
New	Natural Gas Combustion in External Combustion Devices	KCAPCD	NO_X

The CAA section 175A(d) and EPA's guidance on contingency provisions in maintenance plans do not require that the measures be fully adopted. The measures with rule numbers in Table 2 have been fully adopted, are now being fully implemented, and will continue to deliver excess reductions beyond those required to bring the area into attainment.[7] These rules are not in fact contingent, but rather achieve emissions reductions beyond those needed for continued maintenance and will be retained as part of the SIP. The measures indicated as "new'' have not yet been adopted, but would be adopted and implemented as needed to ensure that any violation of the NAAQS that

[6] In addition, the Navy has indicated that it intends to continue operating its ozone monitor at the China Lake Naval Weapons Center.

[7] In previous rulemaking, we have approved as part of the SIP Rules 425, 425.1, 425.2, 425.3, and 427, but we have not yet taken action on Rule 422.1.

occurs after redesignation to attainment will be corrected promptly. We are approving the measures as meeting the requirements of CAA section 175A(d).

6. Motor Vehicle Emissions Budgets

Maintenance plan submittals must specify the maximum emissions of transportation-related precursors of ozone allowed in the last year of the maintenance period. The submittals must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or "budgets'' adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5), and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans when they are approved into the SIP or, in some cases, when the budgets are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, see 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related ozone precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the maintenance demonstration (40 CFR 93.118(e)(4)(v)).

The motor vehicle emissions budgets are presented in Table 3 below, entitled "East Kern County Maintenance Plan Motor Vehicle Emissions Budgets,'' which is taken from Table 5–2.

TABLE 3.—EAST KERN COUNTY MAINTENANCE PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in tons per summer day]

Budget year	NO_X	VOC
2001	8.1	4.8
2005	7.1	3.9
2015	4.0	2.1

The maintenance plan notes that "the budgets were slightly adjusted by adding one tenth of a ton to account for potential emission increases associated with recent state legislation affecting smog check requirements. Because these emissions budgets are expressed in tenths of a ton per day, onroad motor vehicle emissions estimates should be rounded up to the next tenth of a ton'' in future conformity determinations. (Page 5–5 of the maintenance plan.)

Under our policy for reviewing the adequacy of motor vehicle emissions budget submissions, these budgets were posted on our transportation conformity Web site (*http://www.epa.gov/oms/traq*) for public comment. The public comment period on budget adequacy closed on January 16, 2004. We received no comments on the adequacy of the budgets.

As discussed above, the motor vehicle emissions portion of these budgets (*i.e.*, the evaporative and tailpipe emissions) was developed using EMFAC2002 and updated county-specific vehicle data, including the latest East Kern County planning assumptions on vehicle fleet and age distribution and activity levels. In this action, we are approving the motor vehicle emission budgets under CAA section 176(c)(2) because the budgets are consistent with the criteria of 40 CFR 93.118(e)(4) and (5), including consistency with the motor vehicle emissions inventory used in the maintenance demonstration.

B. Redesignation Provisions

1. Finding of Attainment of the 1-Hour Ozone NAAQS

The 1-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than 1 day per year over any 3-year period at any monitor within the area. 40 CFR 50.9 and appendix H. Therefore, demonstrating that an area has attained the 1-hour standard requires calculating the average number of days over the standard per year at each monitor during the preceding 3-year period.[8]

For this proposal, we include Table 4 below, entitled "East Kern County 1-Hour Ozone Maximum Concentrations and Exceedance Days,'' showing attainment based on both the design value and the average number of exceedance days per year for the period 1999 through 2003. The design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a State designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's design value is the highest of the design values from the area's monitors.[9] Attainment is determined using all available, quality-assured air quality data for the 3-year period up to and including the attainment date.[10] Consequently, we used all of the quality-assured data available to determine whether the East Kern County area attained the 1-hour ozone standard. From the available air quality data, we have calculated the average number of days over the standard and the design value for each ozone monitor in the nonattainment area. It should be noted that not all data for the 4th quarter of 2003 have yet been quality assured and entered into EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS–AQS) database.

[8] *See generally* 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

[9] The fourth highest value is used as the design value because a monitor may record up to 3 exceedances of the standard in a 3-year period and still show attainment, since 3 exceedances over 3 years would average 1 day per year, the maximum allowed to show attainment of the 1-hour ozone standard. If the monitor records a fourth exceedance in that period, it would average more than 1 exceedance day per year and would no longer show attainment. Therefore, if a State can reduce the fourth highest ozone value to below the standard, thus preventing a fourth exceedance, then it can demonstrate attainment.

[10] All quality-assured available data include all data available from the state and local/national air monitoring (SLAMS/ NAMS) network as submitted to EPA's AIRS system and all data available to EPA from special purpose monitoring (SPM) sites that meet the requirements of 40 CFR 58.13. See Memorandum John Seitz, Director, OAQPS, to Regional Air Directors; "Agency Policy on the Use of Ozone Special Purpose Monitoring Data,'' August 22, 1997, available at: *http://www.epa.gov/ttn/amtic/files/ ambient/criteria/spms3.pdf.*

TABLE 4.—EAST KERN COUNTY 1-HOUR OZONE MAXIMUM CONCENTRATIONS AND EXCEEDANCE DAYS

Monitor	1st maximum	2nd maximum	3rd maximum	4th maximum (design value)	Exceedances
Mojave:					
1999	0.119	0.113	0.112	0.111	0
2000	0.113	0.112	0.112	0.106	0
2001	0.126	0.119	0.118	0.116	1
2002	0.115	0.113	0.111	0.103	0
2003	0.120	0.119	0.116	0.111	0
China Lake:					
1999	0.104	0.083	0.082	0.080	0
2000	0.100	0.094	0.093	0.091	0
2001	0.089	0.087	0.086	0.085	0
2002	0.101	0.093	0.092	0.091	0
2003	0.095	0.089	0.084	0.083	0
Edwards AFB:					
1999	0.114	0.111	0.111	0.110	0
2000	0.123	0.117	0.115	0.114	0
2001	0.117	0.110	0.109	0.108	0
2002	0.081	0.080	0.079	0.078	0
2003	Monitor not operated				

2003 data are preliminary. The China Lake and Edwards monitors are SPMs operated by the Navy and Air Force, respectively, but must be considered in determining attainment, per EPA's policy on use of ozone SPM data. See Memorandum dated August 22, 1997, from John Seitz to Regional Air Directors, entitled "Agency Policy on the Use of Ozone Special Purpose Monitoring Data" at *http://www.epa.gov/ttn/amtic/files/ ambient/criteria/spms3.pdf.*

Under CAA section 181(b)(2)(A), we must determine whether an ozone nonattainment area has attained the standard by the applicable attainment deadline. As discussed above in Section I.A., East Kern did not attain by the serious area deadline of 1999, but the area was granted two one-year attainment date extensions pursuant to CAA section 181(a)(5), thus moving the attainment deadline to 2001. 77 FR 56476 (November 8, 2001). From Table 4, it is apparent that no monitor in East Kern recorded more than 3 exceedances of the standard for the period 1999–2001. The highest design value at any monitor, and thus the design value for East Kern, for 1999–2001 is 0.116 ppm based on the highest 4th maximum concentration recorded in 2001 at the Mojave site. We are therefore finding under CAA section 181(b)(2)(A) that East Kern attained the 1-hour ozone standard by the applicable deadline of 2001.

Table 4 also shows that the highest design value at any monitor for the 3-year periods 2000–2002 and 2001–2003. As for the period 1999–2001, the design value for East Kern for both 2000–2002 and 2001–2003, is 0.116 ppm, based on the 4th maximum concentration recorded in 2001 at the Mojave site. During these 3-year periods, no monitor recorded more than 3 exceedances. Table 4 shows that the area has continued to maintain the standard through the most recent three-year period of 2001–2003, and East Kern has thus met this prerequisite to redesignation.

2. Fully Approved Implementation Plan under CAA Section 110(k)

Following adoption of the CAA of 1970, California has adopted and submitted and we have fully approved at various times provisions addressing the various SIP elements applicable in East Kern County. As previously mentioned, we fully approved the 1-hour ozone ROP and attainment plan applicable to Kern County on January 8, 1997 (62 FR 1150).

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Chapter 5 of the maintenance plan provides information on activity levels in the area, noting that there is a lack of significant historical change since 1990 and a lack of change in the future. The economy is heavily dependent upon the Naval Air Weapons Station and Edwards Air Force Base, along with related private industry aerospace activities. Mining is the other economic base. Gold and silver mining has diminished since 1992, while borax mining has remained constant. Growth is not projected in the industry as a whole. Just as attainment cannot be ascribed to unusually reduced activity levels, so it cannot be attributed to favorable meteorology. For example, immediately adjacent nonattainment areas experienced unfavorable meteorology in 2003 and dramatic increases in ozone concentrations, but the design value in East Kern County remained well below the 1-hour ozone NAAQS during the past year. Finally, the projected emissions inventory, which shows a decline in total VOC and NO_X emissions (see Table 1, above), takes credit only for reductions that are permanent and enforceable. We therefore conclude that attainment was not the result of unusual activity or meteorology, but rather the permanent and enforceable emissions control measures that continue in force at the State, local, and federal level. Examples of these measures are presented in Table 3–1 of the maintenance plan.

4. Fully Approved Maintenance Plan

In Section II.A., above, we are proposing to approve the maintenance plan as meeting the CAA section 175A provisions.

5. CAA Section 110 and Part D Provisions Satisfied

We approved the East Kern ozone attainment SIP on January 8, 1997 (62 FR 1150) with respect to CAA section 110 and Part D provisions applicable to a serious ozone nonattainment area. As noted above, we have approved other CAA section 110 SIP provisions applicable to East Kern County at various times in the past.

We have not approved the KCAPCD new source review (NSR) rule as meeting the part D requirements contained in CAA section 172(c)(5). However, consistent with EPA guidance, we are not requiring as a prerequisite to redesignation to attainment EPA's full approval of a part

D NSR program.[11] Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, so long as the program is not relied upon for maintenance. The East Kern maintenance plan does not rely on the NSR program and, therefore, the area will not need a part D NSR program to maintain the 1-hour ozone NAAQS.

III. Public Comment and EPA Action

Under CAA section 181(b)(2)(A), we are finding that the East Kern area attained the 1-hour ozone NAAQS by the applicable attainment deadline of 2001. We are approving the East Kern County Maintenance Plan under CAA sections 175A and 110(k)(3). We are approving the 2001, 2005, and 2015 VOC and NO_X motor vehicle emissions budgets in Table 5–2 of the maintenance plan under CAA sections 176(c)(2) as adequate for attainment and maintenance of the 1-hour ozone NAAQS and for transportation conformity purposes. Finally, we are redesignating East Kern County area to attainment for the 1-hour ozone standard under CAA section 107(d)(3)(E).

We do not think anyone will object to this approval and redesignation, so we are finalizing them without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted maintenance plan and request for redesignation to attainment. If we receive adverse comments by May 24, 2004, 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 June 21, 2004. This will incorporate the maintenance plan into the federally enforceable SIP and redesignate the area to attainment of the 1-hour ozone NAAQS.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 June 21, 2004. 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

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 19, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

[11] Memorandum from Mary D. Nichols entitled ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' October 14, 1994.

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)(322)to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(322) New and amended plan for the following agency was submitted on December 9, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(*1*) East Kern County Ozone Attainment Demonstration, Maintenance Plan and Redesignation Request, adopted on May 1, 2003: Chapter 5—''Regional Forecast,'' including emissions inventory summary (Table 5–1) and motor vehicle emissions budgets (Table 5–2); Chapter 6—''Emission Control Measures,'' including contingency measures (Table 6–1); and Appendix B—''Emission Inventories.''

PART 81—[AMENDED]

■ 1. The authority citation for Part 81 continues to read as follows:

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

■ 2. In § 81.305, the California Ozone (1-Hour Standard) table is amended by revising the entry for the East Kern County area to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*	*	
East Kern County:				
That portion of Kern County that lies east and south of a line described below: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East, then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County Boundary.	6/21/04	Attainment ...	.....	
* * * *	*	*	*	

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 04–9036 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 262

[OA–2004–0001; FRL–7650–6]

RIN 2090–AA13

National Environmental Performance Track Program

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: EPA is issuing regulations applicable only to members of EPA's National Environmental Performance Track Program (Performance Track, or the Program). Today's action includes a revision to the Resource Conservation and Recovery Act (RCRA) regulations to allow hazardous waste generators who are members of Performance Track up to 180 days, and in certain cases 270 days, to accumulate their hazardous waste without a RCRA permit or interim status; and simplified reporting requirements for facilities that are members of Performance Track and governed by Maximum Available Control Technology (MACT) provisions of the Clean Air Act (CAA). Today's final rule reflects EPA's response to comments filed by the public, interested stakeholders and associations, the Performance Track Participants Association, and Performance Track members. These provisions are intended to serve as incentives for facility membership in the National Environmental Performance Track Program while ensuring the current level of environmental protection provided by the relevant RCRA and MACT provisions.

DATES: This final rule is effective on April 22, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OA–2004–0001. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Office of Environmental Information Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The 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 Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. In addition to being available in the docket, an electronic copy of this final rule will also be available on the Worldwide Web through the National Environmental Performance Track (Performance Track) Web site at *http://www.epa.gov/performancetrack.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Sachs, Performance Incentives Division, Office of Business and Community Innovation, Office of Policy, Economics and Innovation, Office of Administrator, Mail Code 1808T, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number 202–566–2884; fax number 202–566–0966; e-mail address: *sachs.robert@epa.gov,* or Mr. Chad Carbone, Performance Incentives Division, Office of Business and Community Innovation, Office of Policy, Economics and Innovation, Office of Administrator, Mail Code 1808T, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number 202–566–2178; fax number 202–566–0292; e-mail address: *carbone.chad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include all entities regulated by EPA, pursuant to its authority under the various environmental statutes, who voluntarily decide to join the Performance Track Program. Thus, potential respondents may fall under any North American Industry Classification System (NAICS) Code. The following table lists the Primary NAICS Codes for all current Performance Track members.

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 facility is eligible to be regulated by this action, you should carefully examine the qualifying criteria for the Performance Track Program at *www.epa.gov/performancetrack.* If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

PRIMARY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES OF CURRENT PERFORMANCE TRACK MEMBERS

Industry group	SIC	NAICS
Surgical Appliance and Supplies Manufacturing		339113
Laboratory Apparatus and Furniture Manufacturing		339111
Pharmaceutical Preparation Manufacturing		325412
All Other Miscellaneous Chemical Product and Preparation Manufacturing		325998
Fossil Fuel Electric Power Generation		221112
Dry Cleaning and Laundry Services (except Coin-Operated)		812320
Heating Oil Dealers		454311
Paper (except Newsprint) Mills		322121
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing		334220
Surgical and Appliance and Supplies Manufacturing		339113
Research and Development in the Physical, Engineering, and Life Sciences		541710
Plastics Material and Resin Manufacturing		325211
Wood Preservation		321114
All Other Basic Organic Chemical Manufacturing		325199
Ball and Roller Bearing Manufacturing		332991
Tire Manufacturing (except Retreading)		326211
Semiconductor and Related Device Manufacturing		334413
All Other Motor Vehicle Parts Manufacturing		336399
Fruit and Vegetable Canning		311421
Paperboard Mills		322130
Commercial Screen Printing		323113
Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing		326113
Electronic Computer Manufacturing		334111
Other Motor Vehicle Electrical and Electronic Equipment Manufacturing		336322
Surgical and Medical Instrument Manufacturing		339112
Ophthalmic Goods Manufacturing		339115
All Other Miscellaneous Manufacturing		339999
Hydroelectric Power Generation		221111
Electric Bulk Power Transmission and Control		221121
Electric Power Distribution		221122
Medicinal and Botanical Manufacturing		325411
All Other Miscellaneous Nonmetallic Mineral Product Manufacturing		327999
Printed Circuit Assembly (Electronic Assembly) Manufacturing		334418
Motor Vehicle Body Manufacturing		336211
Dry, Condensed, and Evaporated Dairy Product Manufacturing		311514

PRIMARY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES OF CURRENT PERFORMANCE TRACK MEMBERS—Continued

Industry group	SIC	NAICS
Carpet and Rug Mills		314110
Cut Stock, Re-sawing Lumber, and Planing		321912
All Other Basic Inorganic Chemical Manufacturing		325188
Soap and Other Detergent Manufacturing		325611
Custom Compounding of Purchased Resins		325991
All Other Plastics Product Manufacturing		326199
Concrete Block and Brick Manufacturing		327331
Iron and Steel Mills		331111
Aluminum Die-Casting Foundries		331521
Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers		332812
Farm Machinery and Equipment Manufacturing		333111
Office Machinery Manufacturing		333313
Pump and Pumping Equipment Manufacturing		333911
Electron Tube Manufacturing		334411
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing		334511
Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals		334515
Prerecorded Compact Disc (except Software), Tape, and Record Reproducing		334612
Magnetic and Optical Recording Media Manufacturing		334613
Motor and Generator Manufacturing		335312
Motor Vehicle Transmission and Power Train Parts Manufacturing		336350
Aircraft Manufacturing		336411
Guided Missile and Space Vehicle Manufacturing		336414
Sporting and Athletic Goods Manufacturing		339920
Solid Waste Combustors and Incinerators		562213
National Security		928110
Potash, Soda, and Borate Mineral Mining		212391
Malt Manufacturing		311213
Cigarette Manufacturing		312221
Canvas and Related Product Mills		314912
Reconstituted Wood Product Manufacturing		321219
Wood Window and Door Manufacturing		321911
Pulp Mills		322110
Nonfolding Sanitary Food Container Manufacturing		322215
Synthetic Organic Dye and Pigment Manufacturing		325132
Synthetic Rubber Manufacturing		325212
Noncellulosic Organic Fiber Manufacturing		325222
In-Vitro Diagnostic Substance Manufacturing		325413
Adhesive Manufacturing		325520
Polish and Other Sanitation Good Manufacturing		325612
Surface Active Agent Manufacturing		325613
Printing Ink Manufacturing		325910
Rubber Product Manufacturing for Mechanical Use		326291
All Other Rubber Product Manufacturing		326299
Plate Work Manufacturing		332313
Metal Can Manufacturing		332431
Other Ordnance and Accessories Manufacturing		332995
Printing Machinery and Equipment Manufacturing		333293
Food Product Machinery Manufacturing		333294
Optical Instrument and Lens Manufacturing		333314
Photographic and Photocopying Equipment Manufacturing		333315
Turbine and Turbine Generator Set Units Manufacturing		333611
Bare Printed Circuit Board Manufacturing		334412
Electronic Capacitor Manufacturing		334414
Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use		334512
Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables		334513
Other Communication and Energy Wire Manufacturing		335929
Current-Carrying Wiring Device Manufacturing		335931
Automobile Manufacturing		336111
Truck Trailer Manufacturing		336212
Gasoline Engine and Engine Parts Manufacturing		336312
Motor Vehicle Air Conditioning Manufacturing		336391
Dental Equipment and Supplies Manufacturing		339114
Musical Instrument Manufacturing		339992
Other Nonhazardous Waste Treatment and Disposal		562219
Industrial Launderers		812332
Regulation and Administration of Transportation Programs		926120
Space Research and Technology		927110

Entities potentially affected by this final action also include state, local, and Tribal governments that have been authorized to implement these regulations.

Outline. The information presented in this preamble is organized as follows.

I. General Information
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B. How have stakeholders been involved?
C. What incentives for members are envisioned?
D. What is EPA's rationale for this rule?
1. What environmental benefits will the Performance Track Program bring to society?
2. How will these incentives maximize the benefits of the Performance Track Program?
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4. How does the Performance Track Program design limit membership to a uniquely appropriate set of facilities?
III. Final Rulemaking Changes
A. Maximum Achievable Control Technology (MACT)
1. Definition of Pollution Prevention
2. Reduced frequency of required MACT reporting for all eligible Performance Track facilities
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B. 180-Day accumulation time for Performance Track hazardous waste generators
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2. What are the current requirements for large quantity generator accumulation?
3. What is in today's final rule?
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A. Executive Order 12866, Regulatory Planning and Review
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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
J. Congressional Review Act
VII. Statutory Authority
VIII. Judicial Review

II. Overview

A. What Is the History of This Action?

EPA announced the National Environmental Performance Track Program on June 26, 2000. The Program is designed to recognize and encourage top environmental performers—those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that provide greater benefit to people, communities, and the environment. The Program is based upon the experiences of EPA, states, businesses, and community and environmental groups with new approaches that achieve high levels of environmental protection with greater efficiency. This experience includes: EPA's Common Sense Initiative, designed to improve environmental results by tailoring strategies for six industry sectors; the national Environmental Leadership Program and EPA Region I's Star Track Program, designed as new ways to encourage businesses to do better than required; and many performance track-type programs in states such as Texas, Oregon, Wisconsin, New Jersey, and Virginia.

EPA currently is implementing the Performance Track Program, formerly known as the Achievement Track Program. The Program is designed to recognize facilities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and to report on their progress in doing so. A complete description of the Performance Track Program, its requirements, and other program materials are available on EPA's Web site (*www.epa.gov/performancetrack*) or by calling the Performance Track Information Center toll free at 1–888–339–PTRK (7875).

Performance Track is a voluntary program. Decisions to accept and remove facilities are wholly discretionary to EPA, and applicants or potential applicants have no legal right to challenge EPA's decision. EPA has held seven Performance Track application periods—between August 2000 and October 2000; between February 2001 and April 2001; between August 2001 and October 2001; between February 2002 and April 2002; between August 2002 and October 2002; between February 2003 and April 2003; and between August 2003 and October 2003. In the future, EPA plans to continue holding two application periods each year. There have been 508 facility applicants to Performance Track since its inception. A total of 409 facilities have been accepted into the Program as members. There are currently 344 members in the Program. Generally, facilities that are no longer members (65) have either closed, experienced a change in ownership, or have been dropped from membership in Performance Track for failing to continue to meet program standards.

Today's final rule establishes several regulatory incentives that are enforceable legal requirements for facilities that are members of the Performance Track Program and have taken all other steps required for the applicability or implementation of the individual regulatory incentives. Full eligibility and other Program requirements can be found at the Performance Track Web site (*www.epa.gov/performancetrack*). The Agency believes that, because of the stringency of the Program criteria, facilities in Performance Track should receive the non-regulatory and regulatory benefits outlined in the Program Description (and summarized below). Specifically, for acceptance in Performance Track, facilities must:

- Have adopted and implemented an environmental management system (EMS) that includes specific elements;
- Be able to demonstrate environmental achievements and commit to continued improvement in particular environmental categories;
- Engage the public and report on their environmental performance; and
- Have a record of sustained compliance with environmental requirements.

In addition, Performance Track is designed so that EPA and other stakeholders can monitor and track the implementation of the benefits currently being offered to Program members, as well as those being considered. Member facilities commit to providing annual reports on the status of their efforts to achieve their commitments to improvements in specific environmental categories.

This reporting commitment and other activities to engage the public result in a high level of scrutiny that will aid in monitoring the activities of the Performance Track Program. EPA analyzes these data and publishes a program report annually. This report can be found at *www.epa.gov/performancetrack.* Last, facilities are accepted into Performance Track for a

period of three years. To continue receiving the benefits associated with the Program, facilities must renew their membership, which requires developing additional, continuing commitments to environmental performance improvements.

In its efforts to promote improved environmental performance through the National Environmental Performance Track, EPA is evaluating additional regulatory incentives that could be applied to qualifying facilities. Today's rule is one step among several in developing incentives that will promote participation in the Program and the associated environmental benefits. These incentives will include both those that will be implemented through rulemaking (such as the regulatory changes issued today) and those that may be accomplished through policy, guidance, or administrative action by EPA or the states.

EPA proposed today's rule on August 13, 2002 (67 FR 52674), and the public comment period remained open until November 12, 2002. EPA received comments from 26 different groups. These included 10 Government entities and States; one public sector association; three nongovernmental organizations; seven industry trade associations; and five industry representatives. The majority of comments were supportive and made positive suggestions to improve the Program. Responses to comments are included throughout this preamble where EPA describes the content of the rule (*see* Section III. A. and B.).

B. How Have Stakeholders Been Involved?

During the development of the Performance Track Program and subsequent to its announcement in June 2000, EPA held many meetings with a wide array of stakeholders. Stakeholders included companies, non-governmental organizations, states, associations, and others. Over the course of these meetings, EPA has discussed a broad range of issues, including any incentives that would reward Performance Track members, as well as incentives that would motivate non-Performance Track facilities to implement environmental improvements that would qualify them for membership in the Program.

This rule grew out of the stakeholders' collective interest in promoting incentives for participating facilities. Since the inception of the Program, EPA has held four meetings with state regulators: May 2000 in Denver, February 2001 in Chicago, November 2001 in Charleston, and January 2003 in Denver. At each of these meetings, break-out sessions were held to solicit feedback from state personnel on potential incentives to be offered to Performance Track members.

On December 12, 2000, EPA held a "Charter Event'' for the first round of Performance Track members. At this meeting EPA held a series of breakout discussions. During these sessions, ideas about incentives that could become part of the regulatory framework were discussed.

Similarly, on October 30, 2001 EPA met with a variety of stakeholders including associations, non-governmental organizations, and states to discuss EPA's "Innovations Strategy.'' During this meeting EPA held a specific breakout session on incentives that could be made available for Performance Track members.

In addition, EPA has had discussions regularly with individual Performance Track participants and the Performance Track Participants Association (PTPA), which comprises 165 members. The PTPA is a nonprofit organization that provides a forum for corporations, trade associations, and public entities dedicated to improving their environmental performance through the vehicle of the Performance Track Program. The PTPA meets regularly for member events, and convenes a member conference annually. The PTPA also has an Incentives Workgroup that focuses on identifying and advocating incentives for Performance Track members.

EPA is also working with 23 trade organizations through the Performance Track network to further enhance participation in the Program. Performance Track Network Partners join in a partnership to educate top environmental performers about the value of participating in Performance Track. This partnership increases information available to top environmental performers and provides greater opportunities to them. Network Partners include the following organizations: Academy of Certified Hazardous Waste Managers, American Chemistry Council, American Furniture Manufacturers Association, American Textile Manufactures Institute, Associated General Contractors (AGC) of America, the Auditing Roundtable, Cement Kiln Recycling Coalition, Global Environment & Technology Foundation Public Entity EMS Resource (PEER) Center, Greening of Industry Network (GIN), International Carwash Association, National Association of Chemical Distributors, National Paint and Coatings Association, National Defense Industrial Association, National Pollution Prevention Roundtable, National Ready Mixed Concrete Association, National Stone, Sand and Gravel Association, NORA (an Association of Responsible Recyclers), North American Die Casting Association, Screenprinting and Graphic Imaging Association International, Steel Manufacturers Association (SMA), Synthetic Organic Chemical Manufacturers Association (SOCMA), Voluntary Protection Programs Participants' Association, and Wildlife Habitat Council.

C. What Incentives for Members Are Envisioned?

The Performance Track Program Description at *http://www.epa.gov/performancetrack/,* (publication number EPA–240–F–01–002) provides a list of incentives the Agency originally intended to make available to member facilities. EPA currently offers several incentives that are available to members when they enter the Program (*e.g.*, recognition, networking opportunities, low priority for routine inspection). EPA is also in the process of developing other incentives in areas of the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), and the Clean Air Act (CAA). These incentives include policy, guidance, and regulatory approaches. In some cases, other actions also must be completed before a facility may take advantage of an incentive. For example, states are responsible for implementing parts of many federal environmental programs. In such cases, states may need to revise regulations, seek EPA approval of a revised program, re-issue permits, or take other actions. EPA has made funds available to approximately 20 states to identify where existing state laws may need to be revised to support the National Environmental Performance Track. EPA maintains ongoing contact with State regulators to keep them apprised of new developments, and learn about their approaches. Further information is available at *epa.gov/performancetrack/benefits/index.htm.*

In the Program Description, EPA also committed to propose specific regulatory changes as incentives for membership in the Performance Track. The changes in today's final rule fulfill one aspect of EPA's follow up on this commitment.

EPA is issuing today's regulatory changes to encourage membership in the Program and to acknowledge and further promote realization of the environmental and other benefits resulting from the actions of member facilities. EPA excluded incentives that would involve a relaxation of substantive standards of performance or

that would require statutory change. EPA identified incentives that would apply broadly to different types of facilities, that reduce the reporting and other operating costs of the current system, and that can be implemented nationally.

EPA believes it is important to offer the kinds of incentives described here for several reasons. First, the achievements of these facilities deserve public recognition. Second, some of the reporting and other administrative requirements that apply to the broader regulated community may not be needed for Performance Track facility members because they have implemented appropriate environmental management systems, have consistently met their regulatory commitments, and have agreed to make information regarding their performance publicly available. Third, these incentives may offer the opportunity for member facilities to apply their resources to achieving even better environmental performance. And finally, the availability of these incentives should encourage other facilities to make environmental improvements that will enable them to qualify for membership.

In this final rule, EPA is changing certain regulatory provisions of the CAA and RCRA. These incentives provisions are applicable exclusively to members of Performance Track. They include:

• Reducing the frequency of reports required under the CAA, and in some circumstances submitting an annual certification in lieu of an annual report. In this incentive, first EPA reduces the frequency of required MACT reporting for all eligible Performance Track facilities to an interval that is twice the length of the regular reporting period. This incentive does not apply to major air sources, but it does apply to area air sources if they are not required to hold CAA Title V permits. The second part of this air incentive provides Performance Track facilities with three options to submit an annual certification that all required monitoring and recordkeeping requirements have been met in lieu of the periodic report. For major air sources and area sources required to hold CAA Title V permits however, reports must still be submitted at least semi-annually in order to meet CAA Title V statutory requirements.

• Allowing large quantity hazardous waste generators who are members of the Performance Track up to 180 days (and 270 days if the waste must be transported 200 miles or more) to accumulate hazardous waste without a RCRA permit or interim status, provided that these generators meet certain conditions. This incentive will result in fewer loads of hazardous waste being transported.

EPA also proposed changes to certain Clean Water Act regulations (CWA) in August 2002. The incentives proposed streamlined reporting requirements for Publicly Owned Treatment Works (POTWs). EPA has decided not to adopt the changes proposed in this rulemaking. This decision is based primarily on public comments that such changes should be offered to all POTWs, not only Performance Track members. The agency will continue to consider this matter.

EPA acknowledges comments received on another potential regulatory incentive—the opportunity for Performance Track Facilities to consolidate reporting under various environmental statutes into a single report. Comments included recommendations for a pilot program with a cross-section of facilities, facility sizes, and states and the need to ensure compliance and include performance metrics in exchange for any consolidated reporting incentive. EPA will continue to explore the potential for this incentive with EPA's Office of Environmental Information.

The incentives in today's final rule are part of a broad series of incentives that EPA is currently developing and intends to provide for Performance Track members in the future. That is, EPA continues to seek, analyze, develop, and implement new incentives that apply only to its Performance Track members. As an example, on May 15, 2003, EPA proposed a MACT rule (68 FR 26249) that would further promote improved environmental performance through incentives that are only available to facilities participating in the Performance Track program. Also, on October 29 2003, EPA published a Notice of Data Availability (NODA) in RCRA (69 FR 61662) as part of EPA's burden reduction initiative. The NODA supplemented EPA's January 17, 2002 proposal entitled "Resource Conservation and Recovery Act Burden Reduction Initiative'' at 67 FR 2518. This provision proposes to decrease the frequency of facility self-inspections for certain types of storage units for Performance Track member facilities.

D. What Is EPA's Rationale for This Rule?

EPA believes that facilities who demonstrate top environmental performance through membership in the Performance Track Program should be provided with incentives, recognition and rewards for such behavior. By providing regulatory incentives only available to members of Performance Track, EPA believes membership in the Program will increase over time. As membership increases, so will the number of environmental commitments members make, and therefore the quantity of improvements to the environment. Each facility member of Performance Track commits to quantified, measurable environmental goals that are identified as significant in their environmental management system. Members also commit to report to EPA on an annual basis with the quantified results of progress towards their commitments. As these goals are achieved, and in some cases exceeded, impacts to the environment are reduced, notably in some cases in areas that are not regulated by EPA or States. These quantified, incremental environmental improvements and required reporting are the core of EPA's Performance Track Program.

It is critically important to EPA that members of Performance Track are truly top environmental performers. Regulatory incentives of the nature envisioned by EPA for Performance Track members should be available only to top environmental performers. To ensure that members of Performance Track fit this general criterion, EPA developed specific criteria for applicants to meet in order to be accepted. These are described in moderate detail below.

Facilities must satisfy the four entry criteria to be accepted into the Performance Track:

(1) Facilities must be in compliance with applicable Federal, State, Local, and Tribal environmental regulations.

(2) Facilities must operate a well-designed environmental management system (EMS) as part of their overall management system.

(3) Facilities must demonstrate a record of environmental improvements for the previous two years beyond the minimums required of them. Facilities also must take additional future actions and commit to further improvements in the succeeding three years.

(4) Facilities must engage the public, and each year must report publicly on their progress toward meeting the goals that they have chosen, as well as summarize their compliance and the performance of their EMS. EPA makes the applications and annual performance reports of each facility member available to the public.

These criteria are the key to generating environmental improvements; they were designed to work as an integrated approach. No single criterion, standing alone, would provide EPA with the necessary

assurance that the changes finalized here will lead to increased compliance or performance. However, the Agency believes that these criteria in combination ensure that facilities eligible for regulatory incentives are both capable of and committed to maintaining beyond-compliance environmental performance and that any lapses will be rare and quickly corrected by facility management. Further, the Agency and the public will continue to receive information on facility compliance and performance. Nothing in this final rule will compromise the ability of the Agency to investigate and take action on suspected environmental violations.

History of Sustained Compliance With Environmental Regulations: EPA believes that a strong compliance history is a critical factor in defining performance in the Performance Track. EPA, in cooperation with State, local, and Tribal authorities to the extent possible, reviews the compliance history of all applicants. Performance Track members must have a record of compliance with environmental laws and be in compliance with all applicable environmental requirements. They also commit to maintaining the level of compliance needed to qualify for the Program.

EPA screens all applications consistent with EPA's *Compliance Screening for EPA Partnership Programs: Policy Overview* (located at *http://www.epa.gov/performancetrack/program/guidance.pdf*). In evaluating an applicant's compliance record, EPA, along with its state partners, consults available databases and enforcement information sources. EPA encourages applicants to assess their own compliance record as they make decisions regarding participation in this program. Applicants can check their compliance record with EPA's Enforcement and Compliance History Online (ECHO) database located at (*http://www.epa.gov/echo*).

Participation in the Performance Track is denied if the compliance screen identifies any of the following criminal or civil activity issues under Federal or State law:

Criminal Activity

- Corporate criminal conviction or plea for environmentally-related violations of criminal laws involving the corporation or a corporate officer within the past 5 years.
- Criminal conviction or plea of employee at the same facility for environmentally-related violations of criminal laws within the past 5 years.
- Ongoing criminal investigation/prosecution of corporation, corporate officer, or employee at the same facility for violations of environmental law.

Civil Activity

- Three or more significant violations at the facility in the past 3 years.
- Unresolved, unaddressed Significant Non-Compliance (SNC) or Significant Violations (SV) at the facility.
- Planned but not yet filed judicial or administrative action at the facility.
- Ongoing EPA- or state-initiated litigation at the facility.
- Situation where a facility is not in compliance with the schedule and terms of an order or decree.

Environmental Management Systems: To satisfy the second program criterion, a Performance Track member facility must have a mature environmental management system. These systems integrate environmental considerations into routine decision-making at facilities, establish work practices that consistently reduce environmental risks and releases, evaluate environmental performance, and set management priorities based on the environmental impacts of individual facilities. Because they organize and consolidate information on a facility's environmental obligations and potential weaknesses for management, an EMS often improves the facility's compliance record and reduces accidents. However, many EMS frameworks address unregulated environmental impacts as well as regulated impacts. Thus, an EMS provides a facility with the ability to assess and mitigate impacts that are most significant for the facility or that pose the most risk to the ecosystem and community surrounding the facility. An EMS allows a facility to take additional environmental mitigation actions that are highly effective and appropriate, providing better environmental results as well as more flexibility than the existing regulatory structure alone.

The EMS provisions in Performance Track are designed to ensure that member facilities will continue not only to meet their regulatory obligations, but also to perform better than required by regulation. The Performance Track criterion specifies that a qualifying facility must have an EMS that includes detailed elements in the following categories: Environmental policy (including compliance with both legal requirements and voluntary commitments), planning, implementation and operation, checking and corrective action, and management review. Additionally, qualifying EMSs must have been in full operation for at least one review cycle (generally one year) and must have been audited. The EMS requirements are described in more detail in EPA's National Environmental Performance Track Program description at *www.epa.gov/PerformanceTrack.*

Past and future environmental improvements: Facilities must demonstrate their commitment to continuous environmental improvement. To do this, facilities must identify accomplishments in specific categories. The categories are: energy use, water use, materials use, air emissions (including greenhouse gases), waste, discharges to water, accidental releases, habitat preservation/restoration, and product performance. Past improvements must have been beyond regulatory requirements. In addition, Performance Track facilities must make use of their EMSs to set and commit to achieving environmental performance goals that go beyond regulatory requirements and that mitigate some facility-selected significant environmental impacts. These performance goals must be chosen among the specific categories identified above, including both regulated and unregulated environmental impacts.

Because these performance goals and accomplishments go beyond regulatory requirements and, in some cases, well beyond areas covered by existing environmental regulations, EPA believes that facilities that qualify for Performance Track have demonstrated a serious commitment to real environmental improvement. By virtue of their willingness to undertake greater environmental responsibilities, these facilities have earned the confidence that they will maintain compliance with regulatory requirements under the streamlined procedures outlined in this final rule.

Public commitments: To satisfy the fourth Program criterion, Performance Track facilities publicly disclose progress toward their commitments and other performance information each year in an annual progress report, including summary information regarding their EMS and compliance with legal requirements. Because these commitments and the performance reporting go beyond those required by current regulation, communities have access to more information about the performance of local facilities. This public scrutiny also provides an incentive for firms to make meaningful commitments and achieve them.

EPA believes that facilities that make the choice to apply and to demonstrate their commitments to environmental

improvements in the public spotlight impose upon themselves a unique and particularly strong set of pressures to deliver this heightened level of performance.

In time, EPA expects the Performance Track Program to produce additional environmental gains as a result of the more efficient use of the resources of federal, state, and local environmental authorities. Because EPA expects the entry criteria to result in member facilities that are carrying out their environmental obligations in a manner beyond what is required of them, EPA believes that other authorities will be able to shift enforcement and compliance resources to other facilities in the regulated community. EPA believes this resource reallocation may bring further environmental improvements, as limited compliance resources are applied more effectively.

The regulatory changes EPA is issuing today will enable eligible Performance Track members to reduce their reporting or other compliance costs.

1. What Environmental Benefits Will the Performance Track Program Bring to Society?

Over the past three years the Performance Track program has already produced substantial environmental benefits beyond its member facilities' legal requirements. Some of these environmental benefits include reducing: energy use by 1.1 million mmBtus, water use by 475 million gallons, hazardous materials use by 908 tons, emissions of volatile organic compounds by 329 tons, emissions of air toxics by 57 tons, emissions of nitrogen oxides by 152 tons, discharges to water of biochemical oxygen demand, chemical oxygen demand, and total suspended solids by 1,327 tons, toxic discharges to water by 5,543 tons, solid waste by 150,000 tons, and hazardous waste by 692 tons. Member facilities in the Program have also increased their use of reused and recycled materials by 10,823 tons and have preserved or restored 2,698 acres of wildlife habitat. In addition to these benefits, which should continue to increase, with additional membership into the Program, EPA believes that the refocusing of resources made possible by the Program may lead to additional environmental benefits as well as increased compliance by non-member facilities. The public recognition and administrative burden relief offered by Performance Track, to the extent that they affect company's bottom lines, may also influence company decisions to undertake additional non-regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

2. How Will These Incentives Maximize the Benefits of the Performance Track Program?

Incentives play a crucial role in maximizing the environmental benefits of any voluntary program. Facilities must perceive a benefit to themselves that is at least equal to their perceived costs of membership in a voluntary program. These costs include the administrative burden of membership, as well as any costs incurred in meeting the substantive requirements of the Program. Facility members of the Performance Track Program also face the additional risk of adverse public reaction if they fail to meet their environmental goals or if their audits of compliance or EMS performance reveal problems. These public risks are unique to Performance Track facilities. Facilities participating in other EPA voluntary programs, as well as facilities that do not participate in any voluntary program, may and do keep audit information confidential. Improved public information about the environmental performance of facilities is an important component and public benefit of the Performance Track Program and it significantly raises the costs perceived by facility managers for internal oversights or lapses.

As more benefits to facility members in the Performance Track Program become available and increase, more facilities will be encouraged to apply. Increased program incentives may also generate environmental benefits from non-members. If facilities that do not currently meet the Performance Track Program criteria believe that membership would benefit them, they may work to improve their management systems and environmental performance to become eligible.

3. Will These Incentives Undercut Existing Environmental Protections?

The incentives in today's rule do not undercut existing environmental protections. EPA believes the 180-day accumulation period for hazardous waste and the reporting changes for MACT standards will have no direct deleterious effects on the environmental performance of Performance Track facilities. EPA and other regulatory bodies will receive compliance information from Performance Track facilities less frequently; however, all recordkeeping requirements remain in effect. As a safeguard, EPA and the other governmental authorities retain their ability to take enforcement actions against any facility that fails to comply with permits or other obligations. The risk of a public removal from this Program for failure to comply adds an extra incentive to comply with Program requirements. EPA believes that this, and the fact that facilities may be perceived by the public and by governmental offices as better environmental performers than their competitors, reduces the risk that any environmental damages will result from this program or the regulatory changes EPA is adopting.

4. How Does the Performance Track Program Design Limit Membership to a Uniquely Appropriate Set of Facilities?

EPA designed the Performance Track Program to generate improvements in environmental performance of facilities. EPA believes that the entry criteria and ongoing obligations for continued membership in Performance Track (as summarized in the introduction to section D) will bring about benefits to the environment such as decreased releases of pollutants to the air, water, and land; greater efficiency in energy and raw material usage; and decreased risks of accidental releases of hazardous substances. These incremental environmental benefits will stem from the facilities' activities that are tied to their membership in Performance Track, which justifies making available to this category of facilities the benefits of the modified requirements issued today.

Further, EPA believes that there are controls and safeguards built into the Performance Track Program that reduce the possibility a facility will receive the benefits of today's modified requirements without the facility delivering improved environmental performance.

EPA's announcement of this Program (*www.epa.gov/PerformanceTrack*) describes how applications are reviewed and facilities that meet the entry criteria are selected. It also summarizes other steps EPA takes in running the Program, including conducting site visits at up to 20 percent of the member facilities each year, and the removal of facilities found not to be meeting the commitments they have made. EPA believes this approach is capable of identifying the set of facilities that belong in the Program and differentiating them from tens of thousands of other facilities in the United States. EPA also believes that the combination of the administrative controls of the Performance Track Program and the public reporting voluntarily accepted by program

members will, as a rule, be effective in limiting membership to only such facilities that deliver improved environmental performance.

III. Final Rulemaking Changes

A. Maximum Achievable Control Technology (MACT)

1. Definition of Pollution Prevention

As part of the MACT provision in today's rule, EPA is defining the term "Pollution Prevention.'' The Pollution Prevention Act (42 U.S.C. 13102) defines "source reduction.'' EPA equates Pollution Prevention with source reduction. In today's rule, the statutory definition of source reduction is adopted as the definition of Pollution Prevention. Thus, EPA defines Pollution Prevention to mean source reduction.

In its August 13, 2002 proposal (67 FR 52674), EPA included a definition of Pollution Prevention (P2). The proposed regulatory definition was taken from EPA's guidance from May 1992, and later elaborated upon by then Administrator Carol Browner in "P2 Policy Statement: New Directions for Environmental Protection'' issued on June 14, 1993 (found at *http://www.epa.gov/p2/p2policy/definitions.htm*). EPA's Policy Statement definition of P2 is not identical to the statutory definition of P2. The Policy Statement of P2 adds a few clauses to the statutory definition of P2, and removes another.

Consistent with EPA's Policy Statement definition of P2, the 2002 proposal did not include the following clause from the statutory definition: "The term 'source reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.'' Although this clause from the statute was not included in the 2002 proposal, it was still applicable since EPA cited the statute.

In addition, the language in the 2002 proposal included an additional clause that is not part of the statute, again taken from EPA's Policy Statement definition of P2: "and other practices that reduce or eliminate the creation of pollutants through: Increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation.''

Subsequently, EPA changed its approach in a proposed rule on May 15, 2003. In that action, EPA proposed the statutory definition of P2 verbatim (68 FR 26249). This change stemmed from EPA's conclusion that the statutory definition of P2 was more appropriate for this rule than the Policy Statement definition.

The May 2003 proposed rule was intended primarily to provide alternative compliance options for major sources who reduce their Hazardous Air Pollutants. Also in that proposal were two provisions applicable only to Performance Track members. Since the 2003 proposal included provisions for Performance Track members, EPA provided the public with the opportunity to comment on the interface between the 2003 proposed definition of P2 and Performance Track.

EPA received public comments on the 2002 proposal, but no commenters suggested changes to the P2 definition language. Public comments discussed how the P2 provision was used in this rule. One commenter suggested that all regulated entities that achieve MACT or better through pollution prevention measures be eligible for reporting reductions. Another commenter supported the proposed reporting reductions based on pollution prevention activities. One commenter suggested that EPA reduce or eliminate MACT if a source exceeded its performance goal, or if a major source lowered emissions to below major thresholds through pollution prevention or operational changes.

EPA also received comments on the 2003 proposal, and like the 2002 proposal, there were no comments that directly addressed the definition of P2 as it relates to Performance Track. There were, however, many comments that discussed how the definition of P2 is used in the 2003 proposal. EPA will address these comments when it takes final action on that proposed rule in the future since none of those comments had any relevance to today's rule.

Therefore, today EPA is adopting the definition of P2 that was proposed on May 15, 2003, without modification because it is the most appropriate definition for today's regulatory action.

2. Reduced Frequency of Required Mact Reporting for All Eligible Performance Track Facilities

Facilities covered by the MACT provisions of the Clean Air Act must meet a variety of record-keeping, monitoring, and reporting requirements as specified in 40 CFR Part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories.

For facility members in the Performance Track, EPA is reducing reporting frequency while assuring the continued availability of information required for assessing compliance with MACT standards.

Because of the high-level environmental performance of Performance Track facilities, EPA believes it is appropriate to provide these facilities the opportunity to reduce their reporting frequency under part 63. Since the underlying data required from these facilities will still be gathered, the Agency can still receive the information needed to identify any lapses in compliance.

Current MACT reporting requirements differentiate between facilities, based on facility performance, with respect to reporting frequency. For example, reporting frequency may be increased from semi-annually to quarterly for some reports based on the frequency of excursions outside of required performance parameters. The approach the Agency is adopting today applies a similar concept by reducing reporting frequency for top environmental performers.

Today's rule reduces the frequency of certain required periodic MACT reports for eligible Performance Track facilities. Periodic reports include a range of reports that are required to be sent in to the Permit Authority at intervals that range from quarterly, or more frequently if required by special circumstances, to semi-annually. The reports are different from records, which must be kept on site and incorporated into the periodic reports and other reports. There are general reporting requirements in 40 CFR part 63, subpart A, and additional reporting requirements under other subparts applying to specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants. Performance Track facilities that choose to take advantage of this incentive should notify their State Authority that the facility will submit reports on an annual, rather than semi-annual, basis.

Today's rule doubles the reporting intervals for these reports by amending 40 CFR 63.2 and 63.10, and adding a new 40 CFR 63.16. For major sources and area sources required to hold Title V permits, however, reports must still be submitted at least semi-annually to meet Title V permitting requirements specified in section 504(a) of the Clean Air Act. Public comments expressed concern about the applicability of this incentive, noting specifically that the six-month statutory reporting frequency floor for such air sources may limit the incentive to minor (or synthetic minor) air sources. EPA acknowledges these concerns. EPA is issuing this incentive provision as proposed because of its potential value to any current and future

Performance Track facilities that are regulated as minor sources and not required to hold Title V permits. This final rule does not revise other requirements concerning event reporting, record keeping, and monitoring. EPA also recognizes that because membership in Performance Track is for three years and Clean Air Act permits are for five years, coordination between these event cycles will be required.

3. Reporting Reductions for Performance Track Facilities That Achieve Mact or Better Emission Levels Through Pollution Prevention Methods Such as Process Changes

Today's rule also reduces the level of detail of the required reporting, under some circumstances, for those facilities that reduce emissions below 25 tons per year of aggregate hazardous air pollutant (HAP) emissions and 10 tons per year of any individual HAP, and that have reduced emissions to a level that is fully in compliance with the applicable MACT standard.

For those Performance Track facilities that are below the thresholds for major sources of HAPs (25 tons per year aggregate and 10 tons per year for an individual HAP), and that have reduced the levels of all HAP emissions to at least the level required by full compliance with the applicable standard, additional reductions in reporting requirements are available, depending on the nature of the requirement and the means the facility is using to meet the requirement. As above, however, for major sources, reports must still be submitted at least semi-annually to meet Title V permitting requirements.

For those facilities using pollution prevention technologies or techniques to meet MACT standards, reductions in reporting burden depend on the requirements of the part 63 standard, as well as facility performance.

(1) If the standard calls for control technology and the facility complies using control technology:

The facility can substitute a simplified annual report to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use the control technology to meet the emission standard, and are running it properly. The facility must still fulfill all monitoring and recordkeeping requirements.

(2) If the emission standard is based on performance of a particular control technology and the facility complies using P2:

The facility can substitute a simplified annual report to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels at or below the MACT standard requirements. The facility must still maintain records demonstrating the veracity of the certification.

(3) If the standard calls for pollution prevention and the facility complies by using pollution prevention and the facility reduces emissions by an additional 50% or greater than required by the standard:

The facility can substitute a simplified annual report, to meet all required reporting elements in the applicable Part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels below the MACT standard. The facility must still maintain records demonstrating the veracity of the certification.

Performance Track facilities that choose to take advantage of this incentive should notify their State Authority that the facility will submit a simplified annual report to meet all required reporting elements covered by today's rule.

For each of the above alternatives, if the facility no longer meets the criteria for continued membership in the Program, the incentive will no longer apply.

B. 180-Day Accumulation Time for Performance Track Hazardous Waste Generators

1. Background

Today EPA is adopting provisions, with certain modifications in response to numerous public comments as discussed below, that allow large quantity hazardous waste generators who are members of the Performance Track Program up to 180 days (or up to 270 days in certain cases) to accumulate hazardous waste without a RCRA permit or without having interim status. This regulatory flexibility is intended to provide a benefit to current members of Performance Track, and an incentive for potential members to join the Program. EPA believes the regulatory flexibility provided in this rule will not compromise protection of human health and the environment at Performance Track facilities because of the strict nature of the requirements to become and remain a member of Performance Track. These requirements were described in Section I. D. of this document.

The RCRA incentives in today's rule are consistent with the general objectives of Performance Track, as discussed in Section I of this preamble. In addition, this aspect of the final rule may assist EPA in learning more about how accumulation times for hazardous waste generators may affect the ultimate disposition of hazardous wastes (*e.g.*, recycling vs. disposal), the economics of hazardous waste generation and accumulation, and the overall environmental performance of hazardous waste generator facilities. More specifically, EPA believes that additional accumulation time will allow generators to accumulate enough waste to make transportation to waste management facilities more cost-effective and efficient for the generator. EPA also believes that additional accumulation time may result in environmental benefits related to the reduction in the movement and handling of hazardous waste on-site, as well as fewer off-site shipments. This additional accumulation time for Performance Track members is consistent with the rationale used for the F006 (metal finishing) hazardous waste rule (65 FR 12377, March 8, 2000).

2. What Are the Current Requirements for Large Quantity Generator Accumulation?

The current standards under 40 CFR part 262 for generators of hazardous waste who generate greater than 1,000 kilograms of hazardous waste per month (or one kilogram or more of acute hazardous waste), known as large quantity generators (LQGs), limit the amount of time hazardous waste can be accumulated at the generator's facility without a RCRA permit. Under § 262.34, LQGs may accumulate hazardous waste on-site for up to 90 days without having to obtain a RCRA permit. The generator must comply with certain unit-specific standards (*e.g.*, tank, container, containment building, and drip pad standards) for accumulation units, and certain general facility requirements such as those for marking and labeling of containers, preparedness and prevention, and emergency response procedures. Generators may also petition the EPA Regional Administrator to grant an extension of up to 30 days to the 90-day accumulation time limit due to unforeseen, temporary, and uncontrollable circumstances, on a case-by-case basis (*see* § 262.34(b)).

Today's final rule does not make any changes to the existing regulations that apply generally to 90-day accumulation by LQGs; EPA did not solicit comment in its proposed rule on those provisions

or any other existing provision of § 262.34. This includes the provisions for extended accumulation times for F006 wastes, which are specified at § 262.34(g). Those provisions, which apply only to generators who accumulate F006 wastes, allow for extended accumulation times that are similar in many respects (including the time limits) to those in today's rule for Performance Track members. It is therefore possible that when today's rule is implemented a generator of F006 waste who is also a member in Performance Track could take advantage of extended accumulation times under either regulatory provision (*i.e.*, under § 262.34(g), (h) and (i), or under § 262.34(j), (k) and (l)).

3. What Is in Today's Final Rule?

Today's final rule allows LQGs of hazardous waste that are members of the Performance Track Program to accumulate hazardous waste at their facilities for longer than the 90 days currently specified in § 262.34, subject to certain limitations and conditions. The rule does not affect other existing generator requirements; for example, Performance Track members are required to manifest their hazardous waste shipments (*see* subpart B of part 262) and to comply with other generator requirements in part 262 (*e.g.*, packaging and labeling of waste shipments).

The requirements for Performance Track facility extended accumulation times are added as new paragraphs (j), (k) and (l) to § 262.34. The following is a discussion of each provision.

Time Limits. Section 262.34(j)(1) specifies that hazardous waste generators who are Performance Track members may accumulate hazardous wastes for an extended period of time—up to 180 days, or up to 270 days if the generator must transport waste, or offer waste for transportation, over a distance of 200 miles or more. Such generators do not need to have RCRA permits or to have interim status if they stay within these limits. Note that these extended accumulation time limits are consistent with the current limits for generators of F006 wastes (*see* § 262.34(g)).

Initial Notice. Under § 262.34(j)(2), Performance Track generators need to give prior notice to EPA or the authorized state agency of their intent to accumulate hazardous waste in excess of 90 days in accordance with this rule. These notices will assist EPA and state agencies in monitoring implementation of this incentive. Public comments to the proposal expressed concern that such notifications may place additional burden on facilities with dynamic waste streams if re-notifications are required for each new waste stream. EPA acknowledges this concern, clarifies that notifications are generally one-time events, and estimates that this burden will be of minimal impact to member facilities.

Notices filed under § 262.34(j)(2) must identify the generator and facility, specify when extended accumulation at the facility will begin, and include a description of the wastes that will be accumulated for extended time periods and the units that will be used for that purpose.

The initial notice must also include a statement that the facility has made all changes to its operations, procedures, and equipment necessary to accommodate extended time periods for accumulating hazardous wastes (§ 262.34(j)(2)(iii)). This addresses situations in which longer accumulation times may involve, for example, changing the design, location, or capacity of the unit(s) in which the wastes are accumulated. Such changes could affect how the facility addresses other generator requirements, such as those for personnel training or emergency response procedures. Including this statement in the notice helps ensure in advance that Performance Track members are aware of and have implemented any changes at the facility that may be needed to accommodate extended accumulation times.

For generators who intend to accumulate hazardous waste for up to 270 days because the waste must be transported, or offered for transport, more than 200 miles from the generating facility, the notice submitted by the generator must contain a certification that an off-site permitted or interim status hazardous waste treatment, storage, or disposal facility (TSD) capable of accepting the waste is not located within 200 miles of the generator. In response to comments received on this issue, EPA has clarified in this final rule the situations under which Performance Track generators may accumulate hazardous waste for up to 270 days without a permit. The provision for accumulation up to 270 days is intended to address situations where wastes must be transported for considerable distances to off-site facilities because a permitted or interim status TSD is not located within 200 miles, and where extended accumulation time may thereby enable the facility to more efficiently ship fewer, larger loads of wastes to those facilities.

Section 3001(d)(6) of RCRA allows small quantity generators to accumulate hazardous waste on-site without a permit or interim status for up to 270 days if the generator must transport the waste (or offer the waste for transport) more than 200 miles from the generating facility. While EPA does not necessarily consider the 200 mile exception under RCRA 3001(d)(6) for small quantity generators as an outer boundary on what would be permissible under today's rule, it does suggest that Congress was not comfortable with providing more flexibility for small quantity generators. Accordingly, EPA believes that the 200 mile exception is a reasonable boundary to maintain for large and small quantity generators under the Performance Track program. At least one commenter has stated that a 200 mile exception would encourage generators under the Performance Track program to utilize the closest treatment, storage or disposal facility, rather than the best facility. In response, EPA would like to note that any facility receiving hazardous waste from a generator under the Performance Track program must be a federally permitted or interim status facility and therefore should be able to handle the waste responsibly.

EPA also received one comment questioning the necessity of the certification requirement related to 270 day accumulation. Currently small quantity generators and generators of F006 wastes are able to accumulate wastes for up to 270 days without certifying to the absence, within 200 miles of the generator, of an off-site permitted or interim status hazardous waste treatment, storage, or disposal facility capable of accepting the waste. EPA has included the certification requirement in this incentive because this rule will allow significantly larger quantities of all hazardous wastes to be accumulated for up to 270 days than is authorized by current rules. The certification requirement is minimally burdensome and constitutes a reasonable trade-off in light of the breadth of operational flexibility that this rule affords to Performance Track members.

Standards for Accumulation Units. Another condition (§ 262.34(j)(3)) in today's rule requires Performance Track generators to accumulate hazardous wastes in storage units (such as containers, tanks, drip pads, and containment buildings) that meet the standards for storing hazardous wastes at RCRA interim status facilities (*see* subparts I, J, W, and DD of 40 CFR part 265, respectively). These are standard requirements for large quantity generators.

If Performance Track facilities use containers for extended accumulation of hazardous wastes, today's rule

additionally requires secondary containment systems for containers to prevent releases into the environment that might be caused by handling accidents, deterioration, or other circumstances. Secondary containment is a standard requirement for RCRA-permitted facilities that use containers to store hazardous wastes containing free liquids and certain listed hazardous wastes (*i.e.*, F020, F021, F023, F026, and F027). It is not, however, typically required for hazardous waste generators or interim status facilities. Public comments on the secondary containment requirement included support for the proposal, concerns about the costs of secondary containment, and recommendations for more stringent requirements. EPA believes that requiring secondary containment in the context of this rule is a reasonable, common-sense precaution to take in exchange for extending accumulation time limits and increasing the volume limit.

Volume Limit. Under § 262.34(j)(4), Performance Track member generators are allowed to accumulate no more than 30,000 kilograms of hazardous waste at the facility at any one time. The Agency has information that the typical capacity for a hazardous waste truck transport vehicle ranges from an average of approximately 16,400 kg to a maximum of approximately 27,300 kg.[1] In addition, generators shipping hazardous waste by rail may have capacities of approximately 50,000 kg.[2] While one public comment asked EPA to consider a significantly higher waste stream-specific accumulation limit, comments on balance did not support modifications to the proposal. EPA believes that a 30,000 kg waste accumulation limit is reasonable and appropriate in ensuring economical shipments of wastes in a wide range of transport vehicle sizes.

Recordkeeping, Labeling, and Marking. Section 262.34(j)(5) specifies the types of records that program members must maintain at their facilities as a condition for extended accumulation times. These records are primarily intended to document that the accumulation time limits are not exceeded. Retaining these records is a standard requirement for all LQGs of hazardous waste.

Similarly, § 262.24(j)(6) requires that tanks and container units used for extended accumulation be marked or labeled with the words "Hazardous Waste,'' and that containers be marked to indicate when the accumulation period begins. These are also standard conditions for hazardous waste generators, and are specified in this rule mainly for the sake of clarity.

General Facility Standards. Under current regulations, all hazardous waste generators are subject to certain general facility standards relating to personnel training, preparedness and prevention, and contingency plans and emergency procedures. These general facility requirements also apply to Performance Track generators, and have been included in this rule for the sake of clarity.

Pollution Prevention. The Agency sought comment on whether it is appropriate to require Performance Track facilities to implement pollution prevention practices as a condition for using extended accumulation times in § 262.34(j)(8). A public comment suggested this provision duplicates requirements at § 262.41(a)(6–7). EPA acknowledges the provisions in these two sections are similar. However, the existing provision § 262.41(a)(6–7) is intended for one purpose and today's § 262.34(j)(7) for another.

Final § 262.41(a)(6 and 7) state: "(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated. (7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.'' This provision is required as part of the Biennial report that RCRA generators must submit to the Agency or State.

Final § 262.34 (8) states: "The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants released to the environment prior to its recycling, treatment, or disposal; and'' This new provision is required for RCRA generators who are members of Performance Track. The information must be submitted annually along with the Performance Track member's annual report to the Agency. Requiring this information as part of the annual report is consistent with the core provisions of the Performance Track program. Further, EPA believes any burden associated with this requirement is negligible.

Annual Report. Under final § 262.34(j), Performance Track generators accumulating their hazardous waste for more than 90 days are required to provide information regarding the impact of the additional accumulation time. This information will be submitted as part of the Annual Performance Report, currently required of all Performance Track members (*see www.epa.gov/PerformanceTrack,* or the document entitled "National Environmental Performance Track Program Guide,'' EPA 240–F–01–002). Specifically, the report must include, for the previous year, information on the quantity of each hazardous waste that was accumulated for extended time periods, the number of off-site waste shipments, identification of destination facilities and how the wastes were managed at those facilities, information on the impact of extended accumulation time limits on the facility's operations (including any cost savings that may have occurred), and information on any on-site or off-site spills or other environmental problems associated with handling these wastes. Certain public comments expressed concern about the burden imposed by the proposed additional reporting requirements. EPA does not believe that the additional reporting elements constitute an unreasonable burden upon Performance Track members. The information submitted in these reports will assist the Agency in evaluating the success of this Performance Track Program incentive, and may inform future Agency decisions pertaining to hazardous waste accumulation. The provisions of this rule are supplementary to the existing recordkeeping and reporting requirements applicable to Generators, such as those found at 40 CFR part 262, subpart D.

Accumulation Time Extensions. Today's final rule also adds a new paragraph (k) to § 262.34, to address extensions of accumulation time limits in certain situations. This provision is consistent with the current regulations that apply generally to LQGs (*see* § 262.34(b)), and has been included in today's rule for the sake of clarity. Specifically, it allows the overseeing agency the option of granting a Performance Track generator an additional 30 days of accumulation time, if such extra time is needed due to unforseen, temporary, and uncontrollable circumstances. Requests for such time extensions will be reviewed and approved (or disapproved) in the same manner as they currently are for non-Performance Track LQGs.

[1] Unit Cost Compendium, prepared by DPRA Incorporated, for USEPA, Office of Solid Waste, September 30, 2000 and personal communication with DPRA.

[2] Rail car capacities vary depending on whether the transport unit is a mail box car (from 160 cubic yards to 370 cubic yards), a rail gondola (from 15 cubic yards to 262 cubic yards), or a rail tanker (22,000 gallons), R.S. Means, *Environmental Remediation Estimating Methods,* 1997. In general, one cubic yard of solid equals 1.5 tons and one cubic yard of liquid equals 1 ton.

Withdrawal/Termination From Program. Final § 262.34(l) addresses situations in which a Performance Track facility that has been accumulating hazardous wastes for extended periods of time under this rule decides to withdraw from the Program, or when EPA has for some reason decided to terminate the generator's membership in the Program. In such cases, the generator will need to comply with the previously applicable regulations as soon as possible (the standard requirement for less-than-90-day accumulation by large quantity generators), but no later than six months after withdrawal or termination.

4. How Will Today's Rule Affect Applicability of RCRA Rules in Authorized States?

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. (*See* 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, a State continues to have enforcement responsibilities under its law to pursue violations of its hazardous waste program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003.

After authorization, Federal rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. New Federal requirements imposed by those rules that predate HSWA do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

Today's final rule is not promulgated under HSWA authorities. Consequently, it does not amend the authorized program for states upon promulgation, as EPA does not implement the rule. The authorized RCRA program will change when EPA approves a State's application for a revision to its RCRA program.

For today's Performance Track rule, EPA encourages States to expeditiously adopt Performance Track regulations and begin program implementation. To revise the federally-authorized RCRA program, States need to seek formal authorization for the Performance Track rule after program implementation. EPA encourages States to begin implementing this incentive as soon as it is allowable under State law, while the RCRA authorization process proceeds.[3]

IV. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Cost and Economic Impacts?

Today's final action will reduce costs for the facilities eligible to take advantage of the rule. Most of these cost reductions result from reduced reporting hours burden for facilities, or reduced waste management costs.

EPA has completed seven enrollment periods for the Performance Track Program. There are currently a total of 344[4] facilities in the Program (mostly industrial facilities, but also a number of facilities in the service sector, several federal facilities and a POTW). The economic estimates for today's rule are based on the most recent data that EPA has obtained, and reflects Program membership through round six. EPA intends to solicit and to accept additional facilities into the Program generally, so therefore it is not possible to project cost and burden hour reductions with complete accuracy. Another factor that hinders such projections is that, just as membership in Performance Track is voluntary, it is up to the facilities themselves to decide which incentives apply to them and of which to avail themselves.

Maximum Achievable Control Technology: A total of 309[5] facilities have been accepted into the Performance Track program during the first six open enrollment periods. Of those facilities, EPA estimates that 93 facilities are likely to be eligible for the MACT incentive in today's rule. Performance Track facilities likely to be eligible for the MACT incentive include those members permitted as minor or synthetic minor air sources and in a NAICS sector likely to be to be subject to a MACT requirement. An analysis of EPA's IDEA database yielded 106 potential minor or synthetic minor air sources (*See http://www.epa.gov/compliance/planning/data/multimedia/idea/index.html*). EPA then screened out 13 Performance Track members in sectors unlikely to be subject to MACT requirements (*i.e.*, nine members in the Public Facilities and Institutions sector; two members in the Mining and Construction sector; and two members in the Wholesale Retail and Shipping sector). This analysis resulted in 93 eligible facilities in the current membership. EPA estimates the annual increase in Performance Track members likely to be eligible for the MACT incentive by applying the percentage eligible among the current membership (*i.e.*, 30 percent) to subsequent years.

Extended Accumulation Time for Hazardous Waste Generators: EPA estimates that 125 facilities are likely to be eligible for the RCRA incentives in today's rule.[6] The number of Performance Track facilities that could potentially be affected by the RCRA portion of the rule was assembled from the list of all Performance Track facilities that identified themselves as hazardous waste generators. EPA then relied on the RCRA 2001 Hazardous Waste Data (*i.e.*, Biennial Reporting System) to determine the quantity of waste generated by each facility per year (*See http://www.epa.gov/epaoswer/hazwaste/data/index.htm*). The next step involved excluding Performance Track facilities that are small quantity generators (SQGs), since SQGs may already accumulate hazardous waste for up to 180 days, and thus would not benefit from today's final rule. Again, EPA estimates the annual increase in Performance Track members likely to be eligible for the RCRA incentive by applying the percentage of the current membership to subsequent years.

Total Estimated Impact of Final Rule on Costs and Labor Hours

The estimated cost and hour burden for respondents for today's rule in total is negative 7,954 hours over the three years of the Information Collection Request, equating to a cost savings of $706,846. The estimated cost and hour burden for respondents for today's rule, disaggregated, is negative 16.6 hours per facility per year, that is, a reduction of 16.6 hours from current requirements. The costs are negative $1,350.80 per facility per year, that is, cost reductions/savings of $1350.80.

[3] EPA encourages States to take this approach for less stringent federal requirements where rapid implementation is important. For example, EPA encouraged States to implement State Corrective Action Management Unit Regulations, once adopted as a matter of State law, prior to authorization (*see* 58 FR 8677, February 16, 1993).

[4] The economic estimates for today's rule are based on the most recent data that EPA has obtained, and reflects Program membership through round six.

[5] 5 The economic estimates for today's rule are based on the most recent data that EPA has obtained, and reflects Program membership through round six.

[6] Memorandum dated December 5, 2003, from Industrial Economics, Incorporated (IEc) to EPA's Office of Policy, Economics, and Innovation.

B. What Are the Health, Environmental, and Energy Impacts?

EPA expects there to be no adverse effects on the environment from the direct impacts of today's rule changes. As discussed above, most of the changes relate to reporting or waste management, and do not in any way loosen the underlying environmental obligations of the Performance Track facilities. EPA expects that the reporting changes will not result in any of these facilities becoming more lax in their diligence.

EPA believes that its refocus of resources may lead to additional environmental compliance. Public recognition and relief from regulatory requirements, to the extent that they affect each company's bottom line, may influence company decisions to undertake regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

V. Effective Date for Today's Requirements

The changes contained in this final rule will take effect in the Federal MACT and RCRA programs on April 22, 2004. This rule cannot apply to sources complying with alternative requirements approved through the approval options in subpart E of the section, unless the source reapplies for and demonstrates that the equivalency demonstration for that source shows that this source would be eligible for this program (*see* 64 CFR 55810–55846, September 14, 2000).

This also means that these RCRA rules will apply on April 22, 2004, in any State without an authorized RCRA program, but will not apply in any State with an authorized RCRA program until EPA approves a State's application for a revision to its RCRA program. These rule changes apply only to members of the Performance Track, which is a voluntary program. The changes are intended to provide regulatory relief and do not impose new requirements. Because regulated entities will not need time to come into compliance, the rule changes made today will be effective upon publication.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The estimated cost and hour burden for respondents for today's rule in total is negative 7,954 hours over the three years of the Information Collection Request, equating to a cost savings of $706,846. The estimated cost and hour burden for respondents for today's rule, disaggregated, is negative 16.6 hours per facility per year, that is, a reduction of 16.6 hours from current requirements. The costs are negative $1,350.80 per facility per year, that is, cost reductions/savings of $1350.80.

It has been 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.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information collected pursuant to today's rule is a combination of new information, and a reduction of other information the Agency currently collects. This information will be used so that the Agency will know that facilities eligible for today's provisions are properly implementing them, and also that States have implemented them, if they so choose. This information will enable the Agency to assess compliance with today's final provisions. Responses to the information request are required by respondents to retain provided in today's rule under the Authority: 42 U.S.C. 7401, *et seq.*, and Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938. Responses by States for today's provisions are voluntary.

The estimated cost and hour burden for respondents for today's rule in total is negative 7,954 hours over the three years of the Information Collection Request equating to a cost savings of $706,846. The estimated cost and hour burden for respondents for today's rule, disaggregated, is negative 16.6 hours per facility per year, that is, a reduction of 16.6 hours from current requirements. The costs are negative $1,350.80 per facility per year, that is, cost reductions/savings of $1350.80. The frequency of the responses are a combination of one-time and annual, that is, there are different types of responses required. For instance, if a Performance Track facility seeks to extend its storage time under today's provisions, a one time notification is required. In addition, the facility must provide certain information on an annual basis to the authorized State. The estimated mean number of annual respondents between 2004 and 2006 is 277. The Paperwork Reduction Act requires that the Agency report to the Office of Management and Budget only positive burden hours for Industry and States via its ''83–I'' reporting form. Therefore, the total burden hours reported to OMB is 8950. 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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule 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 final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration definition for the business's NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule will relieve regulatory burden and result in cost savings to entities, including any small entities, that are members of the Performance Track Program. Many small entities (both businesses and governments) and their association representatives were invited to, and attended, the public hearings EPA conducted early in 2000 on the design of the Performance Track Program. EPA has therefore concluded that today's final rule will relieve regulatory burden for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 04–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written Statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written Statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Participation by facilities in the Performance Track is voluntary, and so is participation by State or local government agencies. There are no significant or unique effects on State, local, or Tribal governments, however there may be some minor effects incurred by these entities. EPA projects these costs to be very low. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, as discussed in section I B and elsewhere, EPA did engage these stakeholders in the process of developing the National Environmental Performance Track Program.

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 final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule provides incentives that States can adopt to provide benefits to their State member facilities in the National Performance Track Program. As a voluntary program, Performance Track allows States the option to adopt the provisions in this rule. Thus, Executive Order 13132 does not apply to this rule.

Stakeholders, including many States, were consulted during the development of the Performance Track Program. Many suggestions and ideas generated by States and other stakeholders provided the basis for some of the provisions in this rule. The stakeholder involvement process undertaken is fully discussed in Section I B of this document. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically sought comment on the 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.'' ''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 final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Any effects that Tribes may accrue from this rule will result in cost savings. Thus, Executive Order 13175 does not apply to this rule. Stakeholder involvement is discussed in Section I. B. of this document. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically sought additional comment on the 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 & Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. In the proposed rule, EPA invited the public 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 the provisions of this rule. No such studies or data were identified.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, EPA has concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an Agency does not use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. Thus, the provisions of NTTAA do not apply to this rule and EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule is effective on April 22, 2004.

VII. Statutory Authority

The statutory authority for the MACT portion of this action is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601). The statutory authority for the RCRA portion of this action is provided by sections 2002 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6912 and 6922).

VIII. Judicial Review

Under section 307(b)(1) of the Clean Air Act, judicial review of the MACT portion of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 21, 2004. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements. Under section 6976(a) of the Resource Conservation and Recovery Act, judicial review of the RCRA portion of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 21, 2004. Under this same section 6976(a) of RCRA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 262

Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Dated: April 14, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, we amend parts 63 and 262 of title 40, chapter I of the Code of the Federal Regulations as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.2 is amended by adding, in alphabetical order, definitions for the terms *Pollution Prevention* and *Source at a Performance Track member facility* to read as follows:

§ 63.2 Definitions.

* * * * *

Pollution Prevention means *source reduction* as defined under the Pollution Prevention Act (42 U.S.C. 13101–13109). The definition is as follows:

(1) *Source reduction* is any practice that:

(i) Reduces the amount of any hazardous substance, pollutant, or

contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

(2) The term *source reduction* includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(3) The term *source reduction* does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

* * * * *

Source at a Performance Track member facility means a major or area source located at a facility which has been accepted by EPA for membership in the Performance Track Program (as described at *www.epa.gov/PerformanceTrack*) and is still a member of the Program. The Performance Track Program is a voluntary program that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results.

* * * * *

■ 3. Section 63.10 is amended by:

a. Revising paragraph (d)(1); and

b. Adding paragraph (e)(3)(i)(D).

The revision and addition read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(d) * * * (1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, and except as provided in § 63.16, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

* * * * *

(e) * * *

(3) * * *

(i) * * *

(D) The affected source is complying with the Performance Track Provisions of § 63.16, which allows less frequent reporting.

* * * * *

■ 4. Section 63.16 is added to subpart A and reads as follows:

§ 63.16 Performance Track Provisions.

(a) Notwithstanding any other requirements in this part, an affected source at any major source or any area source at a Performance Track member facility, which is subject to regular periodic reporting under any subpart of this part, may submit such periodic reports at an interval that is twice the length of the regular period specified in the applicable subparts; provided, that for sources subject to permits under 40 CFR part 70 or 71 no interval so calculated for any report of the results of any required monitoring may be less frequent than once in every six months.

(b) Notwithstanding any other requirements in this part, the modifications of reporting requirements in paragraph (c) of this section apply to any major source at a Performance Track member facility which is subject to requirements under any of the subparts of this part and which has:

(1) Reduced its total HAP emissions to less than 25 tons per year;

(2) Reduced its emissions of each individual HAP to less than 10 tons per year; and

(3) Reduced emissions of all HAPs covered by each MACT standard to at least the level required for full compliance with the applicable emission standard.

(c) For affected sources at any area source at a Performance Track member facility and which meet the requirements of paragraph (b)(3) of this section, or for affected sources at any major source that meet the requirements of paragraph (b) of this section:

(1) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using add-on control technology, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is meeting the emission standard by continuing to use that control technology. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act section 114(a)(3).

(2) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using pollution prevention, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions to levels at or below those required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act section 114(a)(3).

(3) If the emission standard to which the affected source is subject is based on pollution prevention, and the affected source complies by using pollution prevention and reduces emissions by an additional 50 percent or greater than required by the applicable emission standard, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions by an additional 50 percent or greater than required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act section 114(a)(3).

(4) Notwithstanding the provisions of paragraphs (c)(1) through (3), of this section, for sources subject to permits under 40 CFR part 70 or 71, the results of any required monitoring and recordkeeping must be reported not less frequently than once in every six months.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 5. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 6. Section 262.34 is amended by adding paragraphs (j), (k), and (l) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(j) A member of the Performance Track Program who generates 1000 kg or

greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that:

(1) The generator accumulates the hazardous waste for no more than 180 days, or for no more than 270 days if the generator must transport the waste (or offer the waste for transport) more than 200 miles from the generating facility; and

(2) The generator first notifies the Regional Administrator and the Director of the authorized State in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this section. Such advance notice must include:

(i) Name and EPA ID number of the facility, and specification of when the facility will begin accumulation of hazardous wastes for extended periods of time in accordance with this section; and

(ii) A description of the types of hazardous wastes that will be accumulated for extended periods of time, and the units that will be used for such extended accumulation; and

(iii) A Statement that the facility has made all changes to its operations, procedures, including emergency preparedness procedures, and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

(iv) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that a facility that is permitted (or operating under interim status) under part 270 of this chapter to receive these wastes is not available within 200 miles of the generating facility; and

(3) The waste is managed in:

(i) Containers, in accordance with the applicable requirements of 40 CFR part 265 subpart I; or

(ii) Tanks, in accordance with the requirements of 40 CFR part 265, subpart J, and § 265.200; or

(iii) Drip pads, in accordance with subpart W of 40 CFR part 265; or

(iv) Containment buildings, in accordance with subpart DD of 40 CFR part 265; and

(4) The quantity of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg; and

(5) The generator maintains the following records at the facility for each unit used for extended accumulation times:

(i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days (or 270 days, as applicable), a description of the waste generation and management practices at the facility showing that they are consistent with the extended accumulation time limit, and documentation that the procedures are complied with; or

(ii) Documentation that the unit is emptied at least once every 180 days (or 270 days, if applicable); and

(6) Each container or tank that is used for extended accumulation time periods is labeled or marked clearly with the words ''Hazardous Waste,'' and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection; and

(7) The generator complies with the requirements for owners and operators in 40 CFR part 265, with § 265.16, and with § 268.7(a)(5). In addition, such a generator is exempt from all the requirements in subparts G and H of part 265, except for §§ 265.111 and 265.114; and

(8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants released to the environment prior to its recycling, treatment, or disposal; and

(9) The generator includes the following with its Performance Track Annual Performance Report, which must be submitted to the Regional Administrator and the Director of the authorized State:

(i) Information on the total quantity of each hazardous waste generated at the facility that has been managed in the previous year according to extended accumulation time periods; and

(ii) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were managed at the destination facilities (*e.g.*, recycling, treatment, storage, or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this section; and

(iii) Information for the previous year on any hazardous waste spills or accidents occurring at extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

(iv) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that a facility that is permitted (or operating under interim status) under part 270 of this chapter to receive these wastes is not available within 200 miles of the generating facility; and

(k) If hazardous wastes must remain on-site at a Performance Track member facility for longer than 180 days (or 270 days, if applicable) due to unforseen, temporary, and uncontrollable circumstances, an extension to the extended accumulation time period of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(l) If a generator who is a member of the Performance Track Program withdraws from the Performance Track Program, or if the Regional Administrator terminates a generator's membership, the generator must return to compliance with all otherwise applicable hazardous waste regulations as soon as possible, but no later than six months after the date of withdrawal or termination.

[FR Doc. 04–9042 Filed 4–21–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7651–4]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by OxyVinyls, LP (OxyVinyls) to exclude (or delist) a certain liquid waste generated by its Houston, TX Deer Park VCM Plant from the lists of hazardous wastes. This final rule responds to the petition submitted by OxyVinyls to delist K017, K019, and K020 Incinerator Offgas Treatment Scrubber Water generated from treating and neutralizing gasses generated in the firebox during the incineration process.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS) EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 919,990 cubic yards per year of the Incinerator Offgas Treatment Scrubber Water. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in accordance with TPDES regulations.

DATES: *Effective Date:* April 22, 2004.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is [F–02–TX–OXYVINYLS]. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact James A. Harris, Jr., U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, at (214) 665–8302.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
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B. Why is EPA approving this delisting?
C. What are the limits of this exclusion?
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IV. Public Comments Received on the proposed exclusion
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I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating the petition, EPA proposed, on October 1, 2003 to exclude the OxyVinyls waste from the lists of hazardous waste under §§ 261.31 and 261.32 (see 65 FR 75897). EPA is finalizing:

(1) The decision to grant OxyVinyls' delisting petition to have its Incinerator Offgas Treatment Scrubber Water generated from treating and neutralizing gasses generated in the firebox during the incineration process subject to certain continued verification and monitoring conditions.

B. Why Is EPA Approving This Delisting?

OxyVinyls' petition requests a delisting from the K017, K019, and K020, waste listings under 40 CFR 260.20 and 260.22. OxyVinyls does not believe that the petitioned waste meets the criteria for which EPA listed it, primarily because the Off-gas Scrubber Waste Water could be considered "derived from'' a listed waste that has been incinerated to destroy the hazardous constituents of the listed waste. OxyVinyls also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from OxyVinyls' facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX, facility.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, appendix IX, table 2 and the conditions contained herein are satisfied.

D. How Will OxyVinyls Manage the Waste if It Is Delisted?

The delisted waste stream will continue to be piped and disposed of at Shell's TPDES-permitted system.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective April 22, 2004. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 USCA 6930(b)(1), allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 USCA 553(d).

F. How Does This Final Rule Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer an RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If

OxyVinyls transports the petitioned waste to or manages the waste in any state with delisting authorization, OxyVinyls must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did OxyVinyls Petition EPA To Delist?

On October 11, 2002, OxyVinyls petitioned EPA to exclude from the lists of hazardous waste contained in § 261.32, Incinerator Offgas Treatment Scrubber Water generated from its facility located in Deer Park, Texas. The waste falls under the classification of listed waste under § 261.30.

B. How Much Waste Did OxyVinyls Propose To Delist?

Specifically, in its petition, OxyVinyls requested that EPA grant a standard exclusion for 919,990 cubic yards per year of the Incinerator Offgas Treatment Scrubber Water.

C. How Did OxyVinyls Sample and Analyze the Waste Data in This Petition?

To support its petition, OxyVinyls submitted:

(1) Historical information on past waste generation and management practices;

(2) Results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) Analytical constituents of concern for K017, K019 and K020

(4) Results from total oil and grease analyses

(5) Multiple pH testing for the petitioned waste.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

No comments were received on the Proposed Rule.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits'' for all "significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

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

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

VII. Paperwork Reduction Act

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

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Executive Order 13045

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

X. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XI. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, EPA is directed 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, business practices, *etc.*) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that EPA to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XII. 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.''

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

This action does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR part 261

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

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

Dated: April 7, 2004.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division, Region 6.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

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

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

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
OxyVinyls, L.P	Deer Park, TX	Incinerator Offgas Scrubber Water (EPA Hazardous Waste Nos. K017, K019 and K020) generated at a maximum annual rate of 919,990 cubic yards per calendar year after April 22, 2004, and disposed in accordance with the TPDES permit. For the exclusion to be valid, OxyVinyls must implement a testing program that meets the following Paragraphs: (1) *Delisting Levels:* All total concentrations for those constituents must not exceed the following levels (mg/kg) in the incinerator offgas scrubber water. Incinerator offgas treatment scrubber water (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; Beryllium-0.166; Cadmium-0.0225; Chromium-5.0; Cobalt-13.14; Copper-418.00; Lead-5.0; Nickel-1.13; Mercury-0.0111; Vanadium-0.838; Zinc-2.61 (ii) Organic Constituents Acetone-1.46; Bromoform-0.481; Bromomethane-8.2; Bromodichloromethane-0.0719; Chloroform-0.683; Dibromochloromethane-0.057; Iodomethane-0.19; Methylene Chloride-0.029; 2,3,7,8–TCDD equivalents as TEQ–0.0000926 (2) *Waste Management:* (A) OxyVinyls must manage as hazardous all incinerator offgas treatment scrubber water generated, until it has completed initial verification testing described in Paragraph's (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) are non-hazardous. OxyVinyls can manage and dispose the non-hazardous incinerator offgas treatment scrubber water according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), OxyVinyls must collect one additional sample and perform expedited analyses to confirm if the constituent exceeds the delisting level. If this sample confirms the exceedance, OxyVinyls must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels set in Paragraph (1). OxyVinyls must notify EPA of the exceedance and resampling analytical results prior to disposing of the waste. (D) If the waste exceeds the levels in paragraph (1) OxyVinyls must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (E) Upon completion of the Verification Testing described in Paragraph's 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of Paragraph (1), OxyVinyls may proceed to manage its incinerator offgas treatment scrubber water as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the Delisting Levels in Paragraph (1), OxyVinyls must manage the incinerator offgas treatment scrubber water as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels. (3) *Verification Testing Requirements:* OxyVinyls must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, OxyVinyls may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). OxyVinyls must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). (A) *Initial Verification Testing:* After EPA grants the final exclusion, OxyVinyls must do the following: (i) Within 60 days of this exclusion becoming final, collect four samples, before disposal, of the incinerator offgas treatment scrubber water. (ii) The samples are to be analyzed and compared against the delisting levels in Paragraph (1) (iii) Within sixty (60) days after this exclusion becomes final, OxyVinyls will report initial verification analytical test data, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final of the incinerator offgas treatment scrubber water. If levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) and are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion, OxyVinyls can manage and dispose of the incinerator offgas treatment scrubber water according to all applicable solid waste regulations after reporting the analytical results to EPA. (B) *Subsequent Verification Testing:* Following written notification by EPA, OxyVinyls may substitute the testing conditions in Paragraph (3)(B) for (3)(A). OxyVinyls must continue to monitor operating conditions, and analyze representative samples for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual composite sample of the incinerator offgas treatment scrubber water. The results are to be compared to the delisting levels in Condition (1).

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

Facility	Address	Waste description
		(C) *Termination of Testing:* (i) After the first year of quarterly testing, if the Delisting Levels in Paragraph (1) are being met, OxyVinyls may then request that EPA stop requiring quarterly testing. After EPA notifies OxyVinyls in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, OxyVinyls must continue to test a representative sample for all constituents listed in Paragraph (1) annually. (4) *Changes in Operating Conditions:* If OxyVinyls significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; OxyVinyls may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* OxyVinyls must submit the information described below. If OxyVinyls fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. OxyVinyls must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, EPA Region 6 Corrective Action and Waste Minimization Section, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener* (A) If, anytime after disposal of the delisted waste OxyVinyls possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If OxyVinyls fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require action by EPA's Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:*

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

Facility	Address	Waste description
		OxyVinyls must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * *

[FR Doc. 04–9138 Filed 4–21–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

[ET Docket No. 02–98; FCC 04–71]

Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Reconsideration filed by Mr. W. Lee McVey in response to the Commission's decision in a Report and Order. The Commission finds that arguments and information provided in the Petition were substantively addressed by the Report and Order and do not merit further consideration.

DATES: Effective May 24, 2004.

FOR FURTHER INFORMATION CONTACT: James Miller, Office of Engineering and Technology, e-mail *james.miller@fcc.gov,* telephone (202) 418–7351.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, ET Docket No. 02–98, FCC 04–71, adopted March 24, 2004, and released March 31, 2004. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com.*

Summary of the Memorandum Opinion and Order

1. The Memorandum Opinion and Order (MO&O), denied the Petition for Reconsideration filed by Mr. W. Lee McVey (petitioner) in response to the Commission's decision in the Report and Order (R&O), 68 FR 33020, June 3, 2003. The Commission found that the arguments and information provided in the Petition were substantively addressed by the R&O and do not merit further consideration.

2. In the R&O, the Commission denied American Radio Relay League, Inc. (ARRL), petition requesting, *inter alia,* that the Commission make a secondary allocation to the Amateur Radio Service (ARS) in the 160–190 kHz band for experimentation in the low frequency (LF) range. Amateur use of the 160–190 kHz band is permitted under part 15 of our rules, and use of any band, including the LF band, can be permitted under our experimental rules on a case-by-case basis. The band is allocated to both the fixed and maritime mobile services on a primary basis for Federal Government users and also to the fixed service on a primary basis for non-Federal Government users. There are ten Federal Government assignments for coast stations communicating with ships at sea, and several Federal Government fixed service sites in this band. There are no non-Federal Government assignments in the Commission's database for this frequency band.

3. In addition, unlicensed devices use the LF spectrum. These systems do not have any allocation status, but are authorized to operate under part 15 of our rules on an unprotected, non-interference basis with respect to all other users. Section 15.209 of our rules generally permits unlicensed operation at power limits of 4.9 microvolts/meter. Further, § 15.113 of our rules specifically permits Power Line Carrier (PLC) systems to operate on power transmission lines for communications important to the reliability and security of electric service to the public in the 9–490 kHz band. In this regard, utility companies have generally come to rely on PLC systems to support a variety of monitoring and control functions of the national power grid. For example, electric utility operators use PLC signaling systems in this band in conjunction with monitoring devices to detect malfunctions and damage to power transmission facilities such as transformer failures and downed lines. When such events occur, these same PLC systems then are used to remotely trip protection circuits that minimize damage to the power system and eliminate danger to individuals in the area of the event.

4. On reconsideration, the petitioner primarily reiterates the opinion he expressed in comments filed in response to the Notice of Proposed Rulemaking (NPRM), 67 FR 40898, June 14, 2002, in the proceeding that PLC use in power grid infrastructure is insignificant and alternative technologies should be encouraged. Although the petition provides additional specific information about PLC systems and alternative technologies used by electric power networks, this information is not substantially different from information in the record, including that supplied by petitioner in his comments, when the Commission made its subject decision. Based on its analysis of the record, including information provided by utility companies that use PLC systems, the Commission found that utility companies have come to rely on PLC systems for monitoring and control of the power grid. Although the petitioner may disagree with this conclusion, it was based on record evidence, and the petitioner has not provided evidence that contests this conclusion.

5. We also disagree with the Petition's assertion that the Commission failed to

take proper action by continuing to rely upon part 15 of our rules and regulations to protect such alleged vital communications and that we should instead provide a primary allocation for PLC systems in this band. PLC systems have been operating successfully in this band for many years on an unlicensed basis pursuant to part 15 of our rules. The Commission acted responsibly in deciding not to modify the allocations for the band. As we noted in the R&O, the Commission considers the potential for interference conflicts between different types of operations, whether licensed or unlicensed, when it considers whether to make allocation changes to a band. That we found a potential threat to PLC operations in the licensing of a new service in the band is not to say that current operations are uncertain or insecure. The Commission concluded that it was better to maintain the *status quo* than to differentiate the status of one service *vis-à-vis* another in the band.

6. Finally, in the NPRM in the proceeding, the Commission did not propose to provide an allocation for PLC systems in this band, and thus the Petition's request that we do so on reconsideration is beyond the scope of this proceeding. Further, we will not initiate a proceeding to provide such an allocation, nor to provide technical and service rules for PLC systems as the Petition requests. We note that the petitioner raised similar arguments in comments filed in response to the NPRM, suggesting that if PLC systems used narrow-band channels, a portion of the band could be made available for an ARS allocation. The Commission determined in the R&O that although other techniques, could be used to control the power grid, these alternatives may not be as effective, would be costly to implement, and would be disruptive to the public. The Commission is not persuaded that it should revisit this issue at this time.

7. In conclusion, the petitioner alternately reiterates arguments and information already considered in the R&O, and requests action beyond the scope of this proceeding. Further, the Commission concludes that, on balance, our decision properly balances concerns for PLC use supporting the protection and control of the national power grid, without unduly constraining amateur use of the band. The Commission denies the Petition for Reconsideration.

Ordering Clauses

8. Pursuant to the authority contained in sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r), the Petition for Reconsideration filed by petitioner *is denied.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–9169 Filed 4–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[MM Docket No. 93–25; FCC 03–78]

RIN 3060–AF39

Cable Television Consumer Protection and Competition Act of 1992; Direct Broadcast Satellite Public Interest Obligations

AGENCY: Federal Communications Commission.

ACTION: Final rule, denied.

SUMMARY: This document denies all Petitions for Reconsideration filed in this proceeding. This document has been superceded by a Sua Sponte Order on Reconsideration, FCC 04–44, adopted March 3, 2004 and released March 25, 2004. The new Order reflects changes in rules regarding children's advertising limits and clarification of rules regarding political broadcasting.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara, Policy Division, Media Bureau, (202) 418–0754.

SUPPLEMENTARY INFORMATION: The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via Internet at *http://www.fcc.gov/mb/.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–9171 Filed 4–21–04; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803 through 1809, 1811, and 1812

RIN 2700–AC65

Re-Issuance of the NASA FAR Supplement Subchapters A and B Consistent With the Federal Acquisition Regulations System Guidance and Policy

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts as final without change, the proposed rule published in the **Federal Register** on November 17, 2003 (68 FR 64847). This final rule amends the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

EFFECTIVE DATE: April 22, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not

control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the ''Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).'' FAR 1.301(a)(2) states in part ''an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).'' Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This rule modifies the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as chapter 18 of title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes. NASA published a proposed rule in the **Federal Register** on November 17, 2003 (68 FR 64847). Comments were received from the Aerospace Industries Association (AIA). AIA recommended that section 1804.7102, Numbering scheme for solicitations, be retained in the CFR on the basis that it describes the numbering prefixes that identify NASA's sites and is useful to contractors. The numbering methodology is an administrative internal control procedure and does not require inclusion in the FAR System requiring public comment. This information will be retained in the integrated NFS document that will contain both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. The single document will continue to be available on the Internet. AIA also recommended that section 1807.7205, Public availability, be retained on the basis that it describes the Internet site where the public can get the annual NASA forecast of procurement opportunities. The rule proposed to revise section 1807.7200, Policy, to include the Internet site information contained in section 1807.7205. Retaining 1807.7205 would result in redundant coverage and is not necessary. No changes are made to the proposed rule as a result of comments received.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.*, because this rule only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1801, 1803 through 1809, 1811, and 1812

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Parts 1801, 1803 through 1809, 1811, and 1812 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1801, 1803 through 1809, 1811, and 1812 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Revise section 1801.105–1 to read as follows:

1801.105–1 Publication and code arrangement.

(b)(i) The NFS is an integrated document that contains both acquisition regulations that require public comment and internal Agency guidance and procedures that do not require public comment. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

(ii) NFS regulations that require public comment are issued as chapter 18 of title 48, CFR.

(iii) The single official NASA-maintained version of the NFS is on the Internet (*http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm*).

■ 3. Amend Part 1801 by removing Subparts 1801.2, 1801.3, 1801.4, 1810.6, and 1801.7.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 4. Amend Part 1803 by removing sections 1803.101, 1803.101–1, 1803.101–2, 1803.104–4, and 1803.104–7; and Subparts 1803.2, 1803.3, 1803.5, 1803.6, 1803.7, and 1803.8.

PART 1804—ADMINISTRATIVE MATTERS

■ 5. Amend Part 1804 by removing section 1804.103, Subparts 1804.2, 1804.5, 1804.6, 1804.8, 1804.9, 1804.70, 1804.71, 1804.72, and 1804.73.

PART 1805—PUBLICIZING CONTRACT ACTIONS

■ 6. Amend Part 1805 by—

■ (a) Removing Subparts 1805.1 and 1805.2;

■ (b) In section 1805.303, removing paragraphs (a)(i)(A), (a)(i)(B), (a)(ii), and (a)(iii);

■ (c) Removing sections 1805.303–70 and 1805.303–71; and

■ (d) Removing Subparts 1805.4 and 1805.5.

PART 1806—COMPETITION REQUIREMENTS

■ 7. Amend Part 1806 by—

■ (a) In section 1806.202, removing paragraph (b); and

■ (b) Removing section 1806.202–70 and Subparts 1806.3 and 1806.5.

PART 1807—ACQUISITION PLANNING

■ 8. Amend Part 1807 by—

■ (a) Removing sections 1807.103, 1807.104, 1807.105, and 1807.170;
■ (b) Revising section 1807.107–70;
■ (c) Removing Subparts 1807.2, 1807.3, 1807.5, 1807.70, and 1807.71;
■ (d) Revising section 1807.7200; and
■ (e) Removing sections 1807.7202, 1807.7203, 1807.7204, and 1807.7205.

Revised sections 1807.107–70 and 1807.7200 read as follows:

1807.107–70 Orders against Federal Supply Schedule contracts or other indefinite-delivery contracts awarded by another agency.

The FAR and NFS requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract or other indefinite-delivery contract awarded by another agency if the requirements consolidated under the order meet the definition of ''bundling'' at FAR 2.101.

1807.7200 Policy.

(a) As required by the Business Opportunity Development Reform Act of 1988, it is NASA policy to—

(1) Prepare an annual forecast and semiannual update of expected contract opportunities or classes of contract opportunities for each fiscal year;

(2) Include in the forecast contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, may be capable of performing; and

(3) Make available such forecasts to the public.

(b) The annual forecast and semiannual update are available on the NASA Acquisition Internet Service (*http://www.hq.nasa.gov/office/procurement/*).

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 9. Amend Part 1808 by removing sections 1808.003, 1808.003–70, 1808.003–71, 1808.003–72, 1808.003–73, Subparts 1808.1, 1808.4, 1808.6, 1808.7, section 1808.802, and Subpart 1808.11.

PART 1809—CONTRACTOR QUALIFICATIONS

■ 10. Amend Part 1809 by removing sections 1809.106, 1809.106–1, 1809.106–2, 1809.106–3, 1809.106–70, 1809.200, 1809.202, 1809.203, 1809.203–70, 1809.203–71, paragraphs (b)(i) and (b)(ii) in section 1809.206–1, 1809.404, 1809.405, 1809.405–1, 1809.405–2, 1809.406, 1809.406–3, 1809.407, 1809.407–3, 1809.408, 1809.470, 1809.470–1, 1809.470–2, 1809.470–3, 1809.500, 1809.503, and 1809.506.

PART 1811—DESCRIBING AGENCY NEEDS

■ 11. Amend Part 1811 by removing section 1811.002, Subpart 1811.1, sections 1811.403, 1811.403–70, 1811.404, and Subparts 1811.5 and 1811.6.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

■ 12. Amend Part 1812 by removing Subpart 1812.1, section 1812.302 and Subpart 1812.4.

[FR Doc. 04–9014 Filed 4–21–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1813, 1814, 1815, 1816, and 1817

RIN 2700–AC83

Re-Issuance of NASA FAR Supplement Parts 1813 Through 1817

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts as final without change, the proposed rule published in the **Federal Register** on December 22, 2003 (68 FR 71055). This final rule amends the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: *Effective Date:* April 22, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the ''Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).'' FAR 1.301(a)(2) states in part ''an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).'' Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This final rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as chapter 18 of title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance

and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes. NASA published a proposed rule in the **Federal Register** on December 22, 2003 (68 FR 71055). No comments were received in response to the proposed rule. Therefore, the proposed rule is being converted to a final rule without change.

B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.*, because this rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1813, 1814, 1815, 1816, and 1817

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1813 through 1817 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1813, 1814, 1815, 1816 and 1817, continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

■ 2. Amend Part 1813 by removing Subpart 1813.1 and sections 1813.301, 1813.301–70, 1813.301–71, 1813.301–72, 1813.701–73, 1813.302, 1813.302–1, 1813.302–70, 1813.303, 1813.303–3, and 1813.307.

PART 1814—SEALED BIDDING

■ 3. Amend Part 1814 by removing sections 1814.201, 1814.201–5, and Subpart 1814.4.

PART 1815—CONTRACTING BY NEGOTIATION

■ 4. Amend Part 1815 by—

■ (a) Removing sections 1815.201, 1815.203, 1815.203–70, 1815.203–71, 1815.204, 1815.204–2, 1815.204–5, 1815.204–70;

■ (b) In the first sentence of paragraph (b) of section 1815.208 removing "(see 1872.705–1 paragraph VII)";

■ (c) Removing sections 1815.300, 1815.300–70, 1815.303, 1815.304, 1815.304–70, 1815.305, 1815.305–71, 1815.306(d)(3)(A) and (B), 1815.307, 1815.308, 1815.370, 1815.403–1, 1815.403–3, 1815.403–4, 1815.404, 1815.404–2, 1815.404–4, 1815.404–470, 1815.404–471–1, 1815.404–471–2, 1815.404–471–3, 1815.404–471–4, 1815.404–471–5, 1815.404–471–6, 1815.406, 1815.406–1, 1815.406–170, 1815.406–171, 1815.406–172, 1815.406–3;

■ (d) Removing "in 1816.603" in the last sentence of section 1815.504; Removing sections 1815.506, 1815.506–70;

■ (e) In section 1815.604, redesignating paragraph (a) as (a)(6); and

■ (f) Removing section 1815.606(b), and 1815.7002.

PART 1816—TYPES OF CONTRACTS

■ 5. Amend Part 1816 by—

■ (a) Removing Subpart 1816.1, sections 1816.203, 1816.203–4, 1816.306, 1816.307(b) and (d), 1816.504, 1816.505, 1816.505–70, and Subpart 1816.6;

■ (b) In section 1816.307, redesignating paragraphs (a) and (g) as (a)(1) and (g)(1) respectively;

■ (c) In section 1816.402, deleting the period at the end of the introductory sentence and adding a colon in its place; and

■ (d) In paragraph (e) of section 1816.402–270, deleting the period at the end of the introductory sentence and adding a colon in its place.

PART 1817—SPECIAL CONTRACTING METHODS

■ 6. Amend Part 1817 by removing Subpart 1817.1, section 1817.203, paragraph (e)(ii) in section 1817.204, sections 1817.206, 1817.207, Subparts 1817.4, 1817.5, 1817.70, 1817.72, sections 1817.7301, 1817.7301–1, 1817–7301–2, 1817.7301–3, 1817.7301–4,1817.7301–5; and in section 1817.7302 removing "described in 1817.7301–5" in the first sentence of paragraphs (a) and (b).

[FR Doc. 04–9011 Filed 4–21–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819, 1822, 1823, 1824, and 1825

RIN 2700–AC84

Re-Issuance of NASA FAR Supplement Subchapter D

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts as final without change, the proposed rule published in the **Federal Register** on December 22, 2003 (68 FR 71056). This final rule amends the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: *Effective Date:* April 22, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also

contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).'' FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).'' Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This final rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as chapter 18 of title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes. NASA published a proposed rule in the **Federal Register** on December 22, 2003 (68 FR 71055). No comments were received in response to the proposed rule. Therefore, the proposed rule is being converted to a final rule without change.

B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.*, because this rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1819, 1822, 1823, 1824, and 1825

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Parts 1819, 1822, 1823, 1824, and 1825 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1819, 1822, 1823, 1824, and 1825, continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS PROGRAMS

■ 2. Amend Part 1819 by removing paragraphs (c), (d), and (f) in section 1819.201, Subparts 1819.5, 1819.6, sections 1819.705–2, 1819.705–4, 1819.705–470, Subpart 1819.8, sections 1819.7000, and 1819.7002.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Amend Part 1822 by—

■ (a) Removing sections 1822.000–70, 1822.101, 1822.101–1, 1822.101–3, 1822.101–4, 1822.101–70, 1822.103, 1822.103–4, Subparts 1822.3, 1822.4, 1822.6, 1822.8, 1822.10, 1822.13, 1822.14, and 1822.15; and

■ (b) Revising section 1822.103–5 to read as follows:

1822.103–5 Contract clause.

Insert the clause at 52.222–1, Notice to the Government of Labor Disputes, in all solicitations and contracts that exceed the simplified acquisition threshold.

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 4. Amend Part 1823 by—

■ (a) Removing sections 1823.203, 1823.270, and Subparts 1823.3 and 1823.4;

■ (b) Removing subsection number and heading "1823.570–1 Scope'' and transferring the text to section 1823.570 and by removing "Section 1823.570 to 1823.570–4 set'' from the beginning of the text and adding in its place "This section sets'';

■ (c) Redesignating subsections 1823.570–2 through 1823.570–4 as 1823.570–1 through 1823.570–3 respectively;

■ (d) In the first paragraph of the redesignated subsection 1823.570–1, remove "1823.570–4'' and add "1823.570–3'' in its place; and

■ (e) Removing subpart 1823.7 and section 1823.7102.

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

■ 5. Amend Part 1824 by removing Subpart 1824.2.

PART 1825—FOREIGN ACQUISITION

■ 6. Amend Part 1825 by—

■ (a) In section 1825.103, removing paragraph (a)(i) and redesignating paragraphs (a)(ii) and (a)(iii) as (a)(i) and (a)(ii) respectively; and

■ (b) Removing section 1825.903, and Subparts 1825.10 and 1825.70.

[FR Doc. 04–9012 Filed 4–21–04; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 69, No. 78
Thursday, April 22, 2004

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–236–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 series airplanes. This proposal would require inspection of the welded joints of the balance weight brackets for the left and right elevator trim tabs for cracking; repetitive inspections, as applicable; and corrective actions including the eventual replacement of all brackets, which would constitute terminating action for the repetitive inspections. This action is necessary to prevent the loss of the balance weight for the elevator trim tab, which could result in incorrect trim during takeoff and landing, and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 24, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–236–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–236–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 Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

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–236–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–236–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–60 series airplanes. The CAA advises that, on one affected airplane, the balance weight assembly for an elevator trim tab detached during landing. Subsequent investigation showed that the failure was caused by fatigue cracking emanating from the weld of the balance weight bracket. This condition, if not corrected, could result in the loss of the balance weight for the elevator trim tab, which could cause incorrect trim during takeoff and landing, and reduced controllability of the airplane.

Explanation of Relevant Service Information

Shorts has issued Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003, which describes procedures for performing a dye penetrant inspection for cracking in the welded joints of the balance weight brackets for the left and right elevator trim tabs. Depending on the results of the dye penetrant inspection, the total number of flight hours accumulated on the airplane and/or the brackets, and the length of any crack, the service bulletin describes procedures for further investigative and corrective actions. These investigative and corrective actions include refitting the balance weights, performing repetitive inspections, repairing the bracket (including a further dye penetrant inspection), and/or replacing the bracket with a new or serviceable bracket, as

applicable. The service bulletin gives compliance times for eventual replacement of all brackets when they reach their life limits. This service bulletin permits further flight with brackets having a cracked welded joint, within certain limits.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 009–06–2003 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is 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. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed AD and the Service Bulletin

Unlike the procedures described in Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003, this proposed AD would not permit further flight if cracks of any length are detected in the welded joints of the balance weight brackets. We have determined that, because of the safety implications and consequences associated with such cracking, any bracket with a cracked welded joint must be repaired or replaced before further flight.

The service bulletin specifies that operators may contact the manufacturer for disposition of certain conditions when refitting balance weights; in those conditions; however, this proposed AD would require operators to obtain further disposition instructions from the FAA or the CAA (or its delegated agent).

Cost Impact

The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $32,760, or $780 per airplane, per inspection cycle.

It would take approximately 8 hours per airplane to accomplish the proposed replacement of the brackets. Required parts would cost approximately $632 per airplane. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $48,384, or $1,152 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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:

Short Brothers PLC: Docket 2003–NM–236–AD.

Applicability: All Model SD3–60 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the balance weight for the elevator trim tab, which could result in incorrect trim during takeoff and landing, and reduced controllability of the airplane, accomplish the following:

Service Bulletin Reference

(a) The term "service bulletin,'' as used in this AD, means the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003.

Initial Inspection

(b) Within 2 months after the effective date of this AD: Do a dye penetrant inspection for cracking in the welded joints of the balance weight brackets for the left and right elevator trim tabs, in accordance with the service bulletin.

Investigative and Corrective Actions if No Cracking Is Found

(c) If no cracking is found during the inspection required by paragraph (b) of this AD, do the actions required by paragraphs (c)(1) and (c)(2) of this AD at the applicable compliance times.

(1) Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 4,800 flight hours until the bracket is replaced per paragraph (c)(2) or (d) of this AD.

(2) Prior to the accumulation of 28,800 total flight hours, or within 6 months after the effective date of this AD, whichever occurs later: Replace any bracket that has not been replaced per paragraph (d) of this AD with a new bracket or with a serviceable bracket that has been inspected in accordance with paragraph (b) of this AD. Replace in accordance with the service bulletin. Replacement of the brackets constitutes terminating action for the repetitive inspections required by paragraph (c)(1) of this AD.

Corrective Actions if Any Crack Is Found

(d) If any crack is found during any inspection required by paragraph (b) or (c) of this AD: Before further flight, accomplish the applicable action in paragraph (d)(1) or (d)(2) of this AD in accordance with the service bulletin.

(1) For airplanes that have accumulated less than 28,800 flight hours and on which all cracks on brackets are less than 0.25 inch in length: Repair the affected bracket in accordance with Part B of the service bulletin (including the additional dye penetrant inspection of the repaired welded joint) and repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 4,800 flight hours; or replace the bracket in accordance with paragraph (d)(2) of this AD. Replacement of the bracket constitutes terminating action for the repetitive inspections.

(2) For any airplane on which any crack on a bracket is 0.25 inch in length or greater, and for any airplane that has accumulated 28,800 flight hours or more on which any crack of any length is found on a bracket: Replace the affected bracket with a new bracket or with a serviceable bracket that has been inspected in accordance with paragraph (b) of this AD. Replacement of the bracket constitutes terminating action for the repetitive inspections required by paragraph (d)(1) of this AD.

Refitting

(e) Before further flight following any inspection per paragraphs (b) or (c) of this AD; or before further flight following repair or replacement of a bracket per paragraphs (c)(2) or (d) of this AD: Refit the balance weights, covers, and trim tabs, in accordance with the service bulletin. Where the service bulletin specifies to contact the manufacturer for disposition of certain conditions while refitting, obtain further disposition instructions from the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (CAA) (or its delegated agent).

Parts Installation

(f) As of the effective date of this AD, no person may install on any airplane a balance weight bracket unless the welded joint has been inspected in accordance with paragraph (b) of this AD.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in British airworthiness directive 009–06–2003.

Issued in Renton, Washington, on April 15, 2004.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9110 Filed 4–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, 100, 200, 300, and 1900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, 300, and 1900 series airplanes. This proposed AD would require you to repetitively inspect the engine controls/cross shaft/pedestal for proper installation and torque, re-torque the cross shaft attach bolt, and modify the pedestal and replace the engine controls cross shaft hardware. Modification of the pedestal and replacement of the engine controls cross shaft hardware is terminating action for the repetitive inspection requirements. This proposed AD is the result of numerous reports of loose bolts on the pedestal attachment of the throttle/prop cross shaft assembly. We are issuing this proposed AD to detect and correct loose bolts not securing the pedestal cross shaft, which could result in limited effectiveness of the control levers. This failure could lead to an aborted takoff.

DATES: We must receive any comments on this proposed AD by June 22, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–04–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. 2004–CE–04–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 proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–04–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: Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–04–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.

Are there any specific portions of this proposed AD I should pay attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed 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 this proposed AD in light of those comments and contacts.

Discussion

What events have caused this proposed AD?

The FAA has received numerous reports of loose bolts not securing the pedestal cross shaft on Raytheon Models B300, C90A, and 1900 series airplanes. Investigation revealed that the bolt securing the pedestal cross shaft can loosen in time and fall out. When the bolt backs out, the cross shaft will flex with throttle or propeller control application. This flexing of the cross shaft limits the effectiveness of the control levers and the operation of the landing gear warning, prop reverse not ready, autofeather, and ground idle micro switches (on models with switches at this location).

What is the potential impact if FAA took no action?

This failure could limit the effectiveness of the engine control levers and result in an aborted takeoff due to failure to make takeoff power.

Is there service information that applies to this subject?

Raytheon has issued Service Bulletin No. SB 73–3634, dated September 2003.

What are the provisions of this service information?

The service bulletin includes procedures for:

—Performing a recurring inspection of the engine controls/cross shaft/pedestal;

—Re-torquing of the cross shaft attach bolt;

—Modifying the pedestal; and

—Replacing the engine controls cross shaft hardware.

FAA's Determination and Requirements of this Proposed AD

What has FAA decided?

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

What would this proposed AD require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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.

Costs of Compliance

How many airplanes would this proposed AD impact?

We estimate that this proposed AD affects 5,025 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish this proposed inspection and re-torque of the cross attach bolt:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour X $65 per hour = $65	Not Applicable	$65	$65 X 5,025 = $326,625

We estimate the following costs to do the proposed modification of the pedestal and replacement of the engine controls cross shaft hardware:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours X $65 per hour = $130	$10	$140	$140 X 5,025 = $703,500

Regulatory Findings

Would this proposed AD impact various entities?

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

Would this proposed AD involve a significant rule or regulatory action?

For the reasons discussed above, I certify that this proposed 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 proposed 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. 2004–CE–04–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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):

Raytheon Aircraft Company: Docket No. 2004–CE–04–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by June 22, 2004.

What Other ADs Are 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 Numbers
(1) 65–A90, B90, C90, and C90A	LJ–76, LJ–114 through LJ–1691.
(2) E90	LW–1 through LW–347.

Model	Serial Numbers
(3) F90	LA–2 through LA–236.
(4) 99, 99A, A99A, B99 and C99	U–1 through U–239.
(5) 100 and A100	B–1 through B–94, B–100 through B–204, and B–206 through B–247.
(6) B100	BE–1 through BE–137.
(7) 200 and B200	BB–2, BB–6 through BB–185, BB–187 through BB–202, BB–204 through BB–269, BB–271 through BB–407, BB–409 through BB–468, BB–470 through BB–488, BB–490 through BB–509, BB–511 through BB–529, BB–531 through BB–550, BB–552 through BB–562, BB–564 through BB–572, BB–574 through BB–590, BB–592 through BB–608, BB–610 through BB–626, BB–628 through BB–646, BB–648 through BB–664, BB–666 through BB–694, BB–696 through BB–797, BB–799 through BB–822, BB–824 through BB–870, BB–872 through BB–894, BB–896 through BB–990, BB–992 through BB–1051, BB–1053 through BB–1092, BB–1094, BB–1095, BB–1099 through BB–1104, BB–1106 through BB–1116, BB–1118 through BB–1184, BB–1186 through BB–1263, BB–1265 through BB–1288, BB–1290 through BB–1300, BB–1302 through BB–1313, BB–1315 through BB–1384, BB–1389 through BB–1425, BB–1427 through BB–1447, BB–1449, BB–1450, BB–1452, BB–1453, BB–1455, BB–1456, BB–1458 through BB–1683, BB–1685 through BB–1716, BB–1718 through BB–1720, BB–1722, BB–1723, BB–1725, BB–1726, BB–1728 through BB–1826.
(8) 200C and B200C	BL–1 through BL–23, BL–25 through BL–57, BL–61 through BL–72, and BL–124 through BL–147.
(9) 200CT and B200CT	BN–1 through BN–4.
(10) 200T and B200T	BT–1 through BT–38, and BB–1314.
(11) 300 and 300LW	FA–1 through FA–230; and FF–1 through FF–19.
(12) B300	FL–1 through FL–379.
(13) B300C	FM–1 through FM–10; and FN–1.
(14) 1900	UA–3.
(15) 1900C	UB–1 through UB–74 and UC–1 through UC–174.
(16) 1900D	UE–1 through UE–439.
(17) 65–A90–1 (U–21A or U–21G)	LM–1 through LM–141.
(18) 65–A90–2 (RU–21B)	LS–1 through LS–3.
(19) 65–A90–3 (U–21 Series)	LT–1 and LT–2.
(20) 65–A90–4 (U–21 Series)	LU–1 through LU–16.
(21) H90 (T–44A)	LL–1 through LL–61.
(22) A100–1 (U–21J)	BB–3 through BB–5.
(23) A100 (U–21F)	B–95 through B–99.
(24) A200 (C–12A and C–12C)	BC–1 through BC–75 and BD–1 through BD–30.
(25) A200C (UC–12B)	BJ–1 through BJ–66.
(26) A200CT (C–12D, FWC–12D, C–12F)	BP–1, BP–7 through BP–11, BP–19, BP–22, and BP–24 through BP–63.
(27) A200CT (RC–12D, RC–12H)	GR–1 through GR–12, and GR–14 through GR–19.
(28) A200CT (RC–12G)	FC–1 through FC–3.
(29) A200CT (RC–12K, RC–12P and RC–12Q)	FE–1 through FE–9, and FE–25 through FE–36.
(30) B200C (C–12F)	BL–73 through BL–112, and BL–118 through BL–123; BP–64 through BP–71.
(31) B200C (C–12R)	BW–1 through BW–29.
(32) B200C (UC–12M)	BV–1 through BV–10.
(33) B200C (UC–12F)	BU–1 through BU–10.
(34) 1900C (C–12J)	UD–1 through UD–6.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of numerous reports of loose bolts on the pedestal attachment of the throttle/prop cross shaft assembly. The actions specified in this AD are intended to detect and correct loose bolts not securing the pedestal cross shaft, which could result in limited effectiveness of the control levers. This failure could lead to an aborted takoff.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspection and torque: (i) inspect the engine controls/cross shaft/pedestal for proper installation and torque; and (ii) re-torque the cross attach bolt.	Initially inspect within the next 50 hours time-in-service (TIS), unless already done within the last 50 hours TIS, and thereafter at intervals not to exceed 100 hours until the modification in paragraph (e)(3) of this AD is done.	Follow Part I, Accomplishment Instructions of Raytheon Aircraft Company Mandatory Service Bulletin No. SB 73–3634, dated September 2003. The applicable airplane maintenance manual also addresses this issue.

Actions	Compliance	Procedures
(2) If any improper installation or wrong torque is found during any inspection required by paragraph (e)(1) of this AD, correct the installation or torque.	Before further flight after the inspection in which any improper installation or wrong torque is found.	Follow Part I, Accomplishment Instructions of Raytheon Aircraft Company Mandatory Service Bulletin No. SB 73–3634, dated September 2003. The applicable airplane maintenance manual also addresses this issue.
(3) Modify the pedestal and replace the engine controls cross shaft hardware. Modification of the pedestal and replacement of the engine controls cross shaft hardware is the terminating action for the repetitive inspection and re-torque requirements specified in paragraph (e)(1) of this AD.	At the next scheduled maintenance/inspection interval or 12 calendar months after the effective date of this AD, whichever occurs later. You may do this time as terminating action for the repetitive inspection and re-torque requirements.	Follow Part II, Accomplishment Instructions of Raytheon Aircraft Company Mandatory Service Bulletin No. SB 73–3634, dated September 2003. The applicable airplane maintenance manual also addresses this issue.

May I Request an Alternative Method 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 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Jeff Pretz, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4107.

May I Get Copies of the Documents Referenced in this AD?

(g) You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 16, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9105 Filed 4–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; Valentin GmbH & Co. Taifun 17E Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Valentin GmbH & Co. Taifun 17E sailplanes. This proposed AD would require you to do an operational check of the front wing-locking mechanism left and right, inspect stop key movement, inspect wing and fuselage side root ribs, inspect the wing side shear force fittings, and take any corrective actions that may be required. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to detect and correct malfunction of wing-locking mechanism, which could result in failure of the wing-locking mechanism disengagement. This failure could lead to unlocking of wing in flight and consequent loss of control of the sailplane.

DATES: We must receive any comments on this proposed AD by May 27, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–56–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–56–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 proposed AD from KORFF + CO.KG, Dieselstrasse 5, D–63128 Dietzenbach, Germany.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–56–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 M. Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–56–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.

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

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed 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 this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an

unsafe condition may exist on all Valentin GmbH & Co. Tailfun 17E sailplanes. The LBA reports that during an investigation, an incorrect locked shear force fitting was found.

What Are the Consequences if the Condition Is Not Corrected?

Malfunction of wing-locking mechanism could result in failure of the wing-locking mechanism disengagement. This failure could lead to unlocking of wing in flight and consequent loss of control of the sailplane.

Is There Service Information That Applies to This Subject?

KORFF & Co. KG has issued Service Bulletin SB–KOCO 03/818, dated December 20, 2002.

What Are the Provisions of This Service Information?

The service bulletin either includes procedures for or specifies the following:

—Inspecting the motor glider rigged;
—Inspecting the motor glider derigged;
—Inspecting the wing side shear force fittings;
—Inspecting the wing and fuselage side root ribs;
—Amending text to the *Flight Manual* and *Instruction for Continued Airworthiness*;
—Replacing the stop key F1–1300 if any malfunction is found; and
—Possible repairing or replacing of wing and fuselage connection if damage is found.

What Action Did the LBA Take?

The LBA classified this service bulletin as mandatory and issued German AD Number 2003–051, dated January 29, 2003, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA Inform the United States Under the Bilateral Airworthiness Agreement?

These Valentin GmbH & Co. Taifun 17E sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

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

FAA's Determination and Requirements of This 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 Valentin GmbH & Co. Taifun 17E sailplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct malfunction of wing-locking mechanism, which could result in failure of the wing-locking mechanism disengagement. This failure could lead to unlocking of wing in flight and consequent loss of control of the sailplane.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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.

Costs of Compliance

How Many Sailplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 25 sailplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish the proposed inspections:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
2 work hours × $65 per hour = $130	No parts needed for inspection	$130	$3,250

We estimate the following costs to accomplish replacement of the stop key F1–1300 that would be required based on the results of the proposed inspections. We have no way of determining the number of sailplanes that may need the stop key F1–1300 replaced or the number of sailplanes that may need additional repair because of abrasion. We also do not know the cost that would be associated with any abrasion repair:

Labor cost	Parts cost	Total cost per sailplane
3 work hours × $65 per hour = $195	$16 each × 2 (2 are required) = $32	$227

Regulatory Findings

Would This Proposed AD Impact Various Entities?

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed 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 proposed 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–56–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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):

Valentin GmbH & Co.: Docket No. 2003–CE–56–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by May 27, 2004.

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: Valentin GmbH & Co. Taifun 17E, all serial numbers are affected except those where Service Bulletin 23–818 has been complied with.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of an incorrect locked shear force fitting, which may have caused wing-locking mechanism disengagement. The actions specified in this AD are intended to detect and correct malfunction of the wing-locking mechanism, which could result in wing-locking mechanism disengagement. This failure could lead to unlocking of wing in flight and subsequent loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) *Perform the following actions with the motor glider rigged.* (i) An operational check of the front wing locking mechanism left and right for damage, deformation, and smooth operation over full travel range. (ii) A visual inspection of the motor glider for stop key movement. The stop key should not move more than 2mm (the maximum tolerable distance to stop position) in the full front stop position	Inspect within 25 hours time in service (TIS) after the effective date of this AD. Repetitively inspect every 25 hours TIS thereafter.	Inspect following the Korff + CO.KG Service Bulletin SB–KOCO 03/818, dated December 20, 2002.
(2) *Perform the following actions with the motor glider derigged.* (i) An operational check of the front wing locking mechanism left and right for damage, deformation, and smooth operation over full travel range. (ii) A visual inspection of the motor glider for stop key movement. You should not be able to move the stop key by hand more than 2mm backwards in the full locked front position	Inspect within 25 hours TIS after the effective date of this AD. Repetitively inspect every 25 hours TIS thereafter.	Inspect following the Korff + CO.KG Service Bulletin SB–KOCO 03/818, dated December 20, 2002.
(3) If deficiencies are found during the inspections required in paragraphs (e)(1) and (e)(2), correct, repair, or replace the defective parts.	Do corrective actions prior to further flight	Correct, repair, or replace defective parts following the Korff + CO.KG Service Bulletin SB–KOCO 03/818, dated December 20, 2002.
(4) Inspect the wing side shear force fittings, wing and fuselage side root ribs, and around all fittings (shear force fittings, wing connections studs, wing connection bushings, connection to the telescopic rods, rear center studs and bushings) for abrasion, deformation, damage, defective bonding, and defective connections. If any of the above conditions are found, contact the manufacturer at the address specified in paragraph (g) of this AD for FAA-approved corrective action and perform the corrective action. You must send a copy of correspondence you send to the manufacturer to the FAA at the address in paragraph (f).	Inspect within 25 hours TIS after the effective date of this AD. Repetitively inspect every 25 hours TIS thereafter. Perform corrective action prior to further flight.	Inspect following the Korff + CO.KG Service Bulletin SB–KOCO 03/818, dated December 20, 2002.
(5) When corrective action or maintenance is done, do an operational check of the motor glider in the rigged and derigged configuration.	After corrective action or maintenance is done, you must do the operational check prior to further flight.	Do the operational check following the Korff + CO.KG Service Bulletin SB–KOCO 03/818, dated December 20, 2002.

May I Request an Alternative Method 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 39.19. The principal inspector may add comments and will send your request to the Manager, Standards Office, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106. For information on any already approved alternative methods of compliance, contact Gregory M. Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from KORFF + CO.KG, Dieselstrasse 5, D–63128 Dietzenbach, Germany. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) LBA airworthiness directive 2003–051, dated January 29, 2003; and Korff + CO.KG Service Bulletin SB–KOCO 03/818, dated December 20, 2002, also address the subject of this AD.

Issued in Kansas City, Missouri on April 16, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9113 Filed 4–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–11–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a supplemental notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes. That action would have required inspections of certain bonded skin panels to detect delamination of the skin doublers (tear straps) from the skin panels, and follow-on corrective actions if necessary. Since the issuance of the supplemental NPRM, the Federal Aviation Administration (FAA) has issued other rulemaking that requires additional inspections to address the unsafe condition identified in the supplemental NPRM. Accordingly, the supplemental NPRM is withdrawn.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A supplemental notice of proposed rulemaking (NPRM) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, was published in the **Federal Register** as a second supplemental NPRM on July 2, 2003 (68 FR 39485). The supplemental NPRM would have required inspections of certain bonded skin panels to detect delamination of the skin doublers (tear straps) from the skin panels, and follow-on corrective actions if necessary. That action was prompted by revised service information, which describes revising certain inspection methods, expanding the area of certain inspections, extending the compliance time for certain inspections, and expanding the effectivity of the service information. The proposed actions were intended to prevent skin doublers from delaminating from their skin panels, which could result in fatigue cracks in the skin doublers and skin panels and consequent rapid decompression of the airplane.

Actions That Occurred Since the Supplemental NPRM Was Issued

Since the issuance of that second supplemental NPRM, the FAA has received a new report of significant cracking. As a result of the immediate safety concerns associated with this cracking, we issued AD 2003–14–06, amendment 39–13225 (68 FR 40759, July 9, 2003) to require the appropriate inspections specified in Boeing Service Bulletin 737–53–1179, Revision 2, dated October 25, 2001 (which was referenced in the supplemental NPRM as the appropriate source of service information for accomplishment of the proposed actions). (A correction of that AD was published in the **Federal Register** on July 21, 2003 (68 FR 42956).) Although we received comments on the second supplemental NPRM, we determined that the immediate safety concerns associated with the new report of cracking required more direct action. Consequently, we issued AD 2003–14–06 to address the identified unsafe condition.

FAA's Conclusions

Because the unsafe condition identified in the supplemental NPRM has already been addressed by AD 2003–14–06, we find it unnecessary to continue with the issuance of this supplemental NPRM. Accordingly, the supplemental NPRM is hereby withdrawn.

Withdrawal of this supplemental NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a supplemental notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the supplemental notice of proposed rulemaking, Docket 98–NM–11–AD, published in the **Federal Register** on July 2, 2003 (68 FR 39485), is withdrawn.

Issued in Renton, Washington, on April 15, 2004.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9112 Filed 4–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 and A340–200, –300, –500, and –600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all

Airbus Model A330–200 and –300 and A340–200, –300, –500, and –600 series airplanes. This proposal would require a one-time inspection of each emergency evacuation slide raft installed on Type "A'' exit doors equipped with regulator valves having a certain part number, to determine if a discrepant regulator valve is installed on the pressure bottle that inflates the slide/raft, and an interim modification of any discrepant valve. This proposal also would require eventual modification of all affected regulator valves, which would terminate the requirements of this AD. This action is necessary to prevent failure of an emergency evacuation slide raft to deploy and inflate during an emergency situation, which could impede an evacuation and result in injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 24, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–211–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–211–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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service information 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–211–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–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Model A330 and A340 series airplanes. The DGAC advises that, during in-service maintenance testing of the emergency escape slides on Type "A'' exit doors, the slides failed to automatically deploy. The failure occurred because, when the exit door was opened, the regulator valve on the pressure bottle that inflates the escape slide did not activate. If the regulator valve does not activate, there is no gas flow to the pressure regulator and through the hoses to the aspirators that inflate the escape slide. Preliminary investigation revealed that slide rafts that have been manufactured by Goodrich since January 2000, and that have not been overhauled since installation, may be affected. Failure of an escape slide to deploy and inflate could cause the slide to be unusable during an emergency evacuation, and result in injury to passengers or crewmembers.

Explanation of Relevant Service Information

Airbus has issued the following All Operators Telexes (AOTs): AOT 25A3206, dated June 2, 2003 (for Model A330–200 and –300 series airplanes); AOT 25A4213, dated June 2, 2003 (for Model A340–200 and –300 series airplanes); and AOT 25A5036, Revision 01, dated July 22, 2003 (for Model A340–500 and –600 series airplanes). The AOTs describe procedures for a one-time maintenance task (inspection) of each emergency evacuation slide raft installed on Type "A'' exit doors equipped with regulator valves having part number 4A3857–1 to determine if a discrepant regulator valve (one that does not function properly, preventing release of gas) is installed on the pressure bottle that inflates the slide/raft, and an interim modification of any discrepant regulator valve. The maintenance task also includes testing the affected regulator valve. The modification involves complete overhaul of the regulator valve or complete overhaul of the slide raft assembly, as applicable, including checking and reaming the inner diameter of the Vespel piston.

The AOTs reference Goodrich Alert Service Bulletin 25A341, Revision 1, dated May 21, 2003, as an additional source of service information for accomplishment of the inspection and modification of the regulator valves.

Accomplishment of the actions specified in the Airbus service information is intended to adequately address the identified unsafe condition. The DGAC classified this service information as mandatory and issued French airworthiness directive 2003–213(B) R1, dated August 20, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section

21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Airbus service information described previously, except as discussed below.

Differences Among French Airworthiness Directive, AOTs, and Proposed AD

The proposed AD would mandate eventual modification of regulator valves having part number 4A3857–1, per a method approved by the FAA. Accomplishment of this modification would terminate the requirements of this proposed AD. The parallel French airworthiness directive does not require a modification, and the AOTs provide for only an interim modification of affected regulator valves. The manufacturer has informed us that approval of a terminating modification that will address the unsafe condition identified in this proposed AD is imminent.

Mandating the terminating modification is based on our determination that, in this case, long-term continued operational safety would be better ensured by a modification to remove the source of the problem, in lieu of interim action without repetitive inspections to monitor the regulator valve. The source of the unsafe condition (failure of an emergency evacuation slide raft to deploy and inflate during an emergency situation) is in the design of the subject regulator valves installed on the pressure bottle that inflates the escape slide.

In developing the compliance time for the modification, we considered the degree of urgency associated with addressing the subject unsafe condition as well as the availability of required parts and the practical aspect of installing the modification within an interval of time that parallels normal scheduled maintenance for most affected operators. We have determined that 18 months for airplanes having regulator valves which have been previously modified, and 6 months for airplanes having regulator valves that have not been previously modified, represents an appropriate interval of time in which an ample number of required parts will be available to modify the affected fleet without adversely affecting the safety of these airplanes.

The AOTs recommend submitting certain information to the manufacturer, but this proposed AD does not contain such a requirement.

The French airworthiness directive specifies that slide rafts that have been overhauled previously are not affected. We have determined that the malfunction of the regulator valve is not adequately addressed by the overhaul procedures specified in Goodrich Component Maintenance Manual (CMM) 25–62–31, Revision 1, Paragraph H, which do not include reaming the inner diameter of the Vespel piston. Therefore, regulator valves installed on previously overhauled slide rafts are not exempt from the proposed AD.

The compliance times for the inspection of the regulator valves of the slide rafts recommended in the French airworthiness directive and the AOTs are determined by the date of manufacture of the slide raft, and specify inspecting at least half of the affected valves in 3 months, and inspecting the remainder of the valves 3 months after the first half are inspected. However, since the regulator valve on all affected slide rafts is the same design, we have determined the compliance time for the inspection of all regulator valves on all airplanes affected by this proposed AD to be within 6 months after the effective date of the AD. In developing an appropriate compliance time for this AD, we considered the degree of urgency associated with the subject unsafe condition and the average utilization of the affected fleet. In light of these factors, we find that a 6-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

These differences have been coordinated with the DGAC.

Clarification of Inspection

The AOTs specify "one-time maintenance'' to determine if a certain discrepant regulator valve is installed, but we have clarified the requirement contained in the proposed AD as a one-time general visual inspection. Note 1 has been added to this proposed AD define that inspection.

Cost Impact

We estimate that 14 Model A330 series airplanes of U.S. registry would be affected by this proposed AD.

It would take about 1 work hour per slide (8 slides per airplane) to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $7,280, or $520 per airplane.

It would take about 13 work hours per slide (8 slides per airplane) to accomplish the proposed modification, at an average labor rate of $65 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $94,640, or $6,760 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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.

Currently, there are no Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require 1 work hour per slide (8 slides per airplane) to accomplish the proposed inspection; and 13 work hours per slide (8 slides per airplane) to accomplish the proposed modification, at an average labor rate of $65 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed inspection would be $65 per slide and the proposed modification would be $6,760 per airplane for Model A340 operators.

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:

Airbus: Docket 2003–NM–211–AD.

Applicability: All Model A330–200 and –300 and A340–200, –300, –500, and –600 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an emergency evacuation slide raft to deploy and inflate during an emergency situation, which could impede an evacuation and result in injury to passengers or crewmembers, accomplish the following:

Service Information References

(a) The following information pertains to the service information referenced in paragraphs (b) and (c) of this AD:

(1) The term ''All Operators Telex'' (AOT) as used in this AD, means the Accomplishment Instructions of AOT 25A3206, dated June 2, 2003 (for Model A330–200 and –300 series airplanes); AOT 25A4213, dated June 2, 2003 (for Model A340–200 and –300 series airplanes); and AOT 25A5036, Revision 01, dated July 22, 2003 (for Model A340–500 and –600 series airplanes).

(2) Accomplishment of the actions before the effective date of this AD per AOT 25A5036, dated June 2, 2003, is considered acceptable for compliance with the corresponding actions specified in this AD.

(3) The AOTs refer to Goodrich Service Bulletin 25A341, Revision 1, dated May 21, 2003, as an additional source of service information for accomplishment of the actions specified in the AOTs.

(4) Although the AOTs referenced in this AD specify to submit certain information to the manufacturer, this AD does not include such a requirement.

Inspection/Modification

(b) Within 6 months after the effective date of this AD, do a one-time general visual inspection of each slide raft to determine if a discrepant regulator valve (one that does not function properly, preventing release of gas) is installed on the pressure bottle that inflates the slide/raft. Do the inspection per the applicable AOT.

(1) If any discrepant regulator valve is found: Before further flight, do the interim modification of the regulator valve for that slide raft only, per the applicable AOT.

(2) If no discrepant regulator valve is found, no further action is required by this paragraph.

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.''

Terminating Modification

(c) Except as required by paragraph (b)(1) of this AD: Modify any regulator valve having P/N 4A3857–1, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Accomplishment of this paragraph terminates the requirements of this AD.

(1) For airplanes on which the regulator valves have been modified per the applicable AOT as of the effective date of this AD: Within 18 months after the effective date of this AD.

(2) For airplanes on which the regulator valves have not been modified per the applicable AOT as of the effective date of this AD: Within 6 months after the effective date of this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directive 2003–213(B) R1, dated August 20, 2003.

Issued in Renton, Washington, on April 15, 2004.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9111 Filed 4–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 1

[Docket No. RM04–7–000]

Notice of Technical Conference and Initiation of Rulemaking Proceeding

April 14, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Initiation of rulemaking proceeding and notice of technical conference.

SUMMARY: The Federal Energy Regulatory Commission is establishing a rulemaking proceeding with respect to the adequacy of the current four-prong analysis and whether and how it should be modified to assure that electric market-based rates are just and reasonable under the Federal Power Act. The Commission will convene a series of technical conferences that will be open to the public. The first such technical conference will be June 9, 2004, at the Commission's headquarters. The purpose of this conference will be to frame the issues that will comprise the rulemaking proceeding, including a discussion on how all four parts of the current test interrelate, as well as what other factors the Commission should consider in granting market-based rate authorizations.

FOR FURTHER INFORMATION CONTACT: Michelle Barnaby, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8407.

SUPPLEMENTARY INFORMATION:

107 FERC ¶ 61,019

Federal Energy Regulatory Commission

[Docket No. RM04–7–000]

Market-Based Rates For Public Utilities; Initiation of Rulemaking Proceeding on Market-Based Rates and Notice of Technical Conference

April 14, 2004.

1. In a companion order we are issuing today in *AEP Power Marketing, Inc.,* Docket No. ER96–2495–016, *et al.*

(*AEP Order*),[1] the Commission adopts new interim generation market power screens to identify those applicants for electric market-based rate authority that may possess generation market power. An analysis of whether an applicant possesses generation market power has for many years been one of the four prongs of analysis the Commission has used to assess whether an applicant should be granted market-based rate authority. The other three prongs that the Commission has considered are (1) whether the applicant has transmission market power, (2) whether the applicant can erect barriers to entry, and (3) whether there are concerns involving the applicant that relate to affiliate abuse and/or reciprocal dealing. In today's *AEP Order* and in prior orders in the same dockets, the Commission stated that the generation market power screen it was adopting in that proceeding was only an interim screen, and that the Commission intended to initiate a generic rulemaking proceeding on potential new analytical methods for assessing markets and market power. The Commission has also stated that as part of this process it intended to hold a series of outreach meetings with industry experts on these matters.[2] The purpose of this notice is to initiate a rulemaking proceeding with respect to the adequacy of the current four-prong analysis and whether and how it should be modified to assure that electric market-based rates are just and reasonable under the Federal Power Act.

2. The Commission's four-prong market-based rate test was developed nearly 15 years ago, in the context of specific market-based rate proposals filed with the Commission, and currently there are no comprehensive codified regulations governing what applicants must demonstrate in order to obtain market-based rate authorization from the Commission. Much has changed in the industry since the Commission began using the four-prong test in the 1980s, and we believe it is important not only to ensure that our test is sufficient to support market-based rates in today's energy markets, but also to provide clarity, by way of codified regulations, as to what applicants must demonstrate in order to obtain (and retain) authority to sell at market-based rates.

3. This generic proceeding will address, but not be limited to, whether the Commission should retain or modify its existing four-prong test (*e.g.*, whether the analysis should explicitly address vertical market power issues); whether the factors the Commission considers under the existing prongs should be revised; whether the interim generation market power screens that are adopted today in the *AEP Order* should be retained over the long-term; whether the Commission should adopt different approaches to affiliate transactions than it currently does; and whether there should be new Commission regulations promulgated expressly for electric market-based rate filings. The Commission intends the scope of this rulemaking proceeding to be broad, and to include market-based rate authorizations associated with ancillary services.

4. In order to have a better understanding of the issues that need to be considered, as well as the procedural direction the rulemaking should take, as a first step the Commission intends to convene a series of technical conferences that will be open to the public. The Commission will hold the first such technical conference on June 9, 2004, at the Commission's headquarters. The purpose of this conference will be to frame the issues that will comprise the rulemaking proceeding, including a discussion of how all four parts of the current test interrelate, as well as what other factors the Commission should consider in granting market-based rate authorizations.

5. 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 10 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 over the Internet, by phone or via 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.org* and click on "FERC.''

6. For more information about the conference, please contact Michelle Barnaby at 202–502–8407 or *Michelle.Barnaby@ferc.gov*.

7. A supplemental notice of this conference will be issued later that will provide details of the conference, including the panelists.

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 04–9099 Filed 4–21–04; 8:45 am]

BILLING CODE 6717–01–P

[1] 107 FERC ¶ 61,018 (2004) (*AEP Order*).

[2] *See, e.g., AEP Order,* 107 FERC ¶ 61,018 at P1–2; AEP Power Marketing, Inc, *et al.*, 97 FERC ¶ 61,219 at 61,967 & n.2 (2001); Notice Delaying Effective Date of Mitigation and Announcing Technical Conference, December 20, 2001 at 1; Notice of Technical Conference on Supply Margin Assessment Screen and Alternatives, December 19, 2003, at 1, 3, and attached Staff Paper at 1.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 208, and 209

[Docket No. 2003N–0324]

RIN 0910–AC35

Toll-Free Number for Reporting Adverse Events on Labeling for Human Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing the format and content of labeling for human drug products for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355). The proposed rule would require the addition of a statement that includes a toll-free number and advises that the number is to be used only for reporting side effects and is not intended for medical advice (the side effects statement). When finalized, this rule will bring FDA regulations into compliance with provisions of the Best Pharmaceuticals for Children Act (the BPCA).

DATES: Submit written or electronic comments by July 21, 2004. See section IV of this document for the proposed effective date of any final rule based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. 2003N–0324 and RIN 0910–AC35, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2003N–0324 and RIN 0910–AC35 in the subject line of your e-mail message.

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. 2003N–0324 and RIN 0910–AC35 or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Carol Drew, 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

A. BPCA Requirements

Section 17 of the BPCA (Public Law 107–109) requires FDA to issue a final rule requiring the labeling of each human drug product for which an application is approved under section 505 of the act (21 U.S.C. 355) to include: (1) A toll-free number maintained by FDA for the purpose of receiving reports of adverse events regarding drugs, and (2) a statement that the number is to be used for reporting purposes only, not to seek or obtain medical advice. The BPCA states that the final rule must implement the labeling requirement so as to reach the broadest consumer audience and minimize the cost to the pharmacy profession.

B. MedWatch

FDA already has an adverse drug events reporting program. FDA's existing MedWatch safety information and adverse event reporting program (MedWatch program) includes a toll-free number to facilitate the reporting of adverse events directly to the agency by both health care practitioners and consumers.

Under the existing MedWatch program, consumers and health care practitioners may report serious adverse events, side effects, or problems they suspect are associated with drug products they use or prescribe. To obtain accurate and complete reports of side effects with a potential association to drug products, FDA generally recommends that consumers advise their health care practitioners to report side effects to the drug manufacturer or MedWatch program. However, consumers may also report side effects to FDA directly. A postage-paid MedWatch 3500 form will be mailed or faxed to a consumer who calls 1–800–FDA–1088 and requests a form. A completed form can be mailed or submitted to MedWatch's fax number, 1–800–FDA–0178. Reporting also may be done online at *http://www.fda.gov/medwatch*. FDA encourages consumers to use the MedWatch Website to report adverse events. Consumers who call the MedWatch phone number are given the MedWatch Website address and the option of completing and submitting the reporting form on the Internet.

Currently consumers receive an acknowledgement from FDA after their report is received. Consumers are personally contacted only if additional critically important information is needed. All reports are entered into a database and are evaluated by a safety evaluator. All information is submitted in confidence and protected to the fullest extent of the law.

C. Existing Labeling Requirements

Section 505 of the act describes requirements for the agency's approval of new drug applications (NDAs) and abbreviated new drug applications (ANDAs). FDA regulates many forms of drug labeling for drug products approved under section 505 of the act. Regulated labeling includes: A prescription drug product's approved labeling directed to health care practitioners (physician labeling), FDA-approved Medication Guides, patient package inserts (PPIs) for certain drug products, and over-the-counter (OTC) drug product labeling.

II. Description of the Proposed Rule

A. FDA's Approach to the BPCA Requirements

FDA is proposing that the MedWatch system should be used to fulfill the requirements of the BPCA for providing a toll-free number for the purpose of receiving adverse event reports regarding drug products.

FDA is proposing that the side effects statement be distributed with each prescription drug product, both new prescriptions and refills, approved under section 505 of the act and dispensed to consumers by pharmacies and authorized dispensers in an outpatient setting. FDA is proposing a number of options/alternatives to meet this proposed requirement. FDA also is proposing to require the side effects statement in two categories of drug product labeling: (1) FDA-approved Medication Guides for drugs approved under section 505 of the act, and (2) the labeling for OTC drug products approved under section 505 of the act. Manufacturers may include the side effects statement in PPIs or Medication Guides on a voluntary basis for products not approved under section 505 of the act. In addition, FDA has proposed adding FDA's toll-free MedWatch telephone number to physician labeling in the proposed rule entitled "Requirements on Content and Format of Labeling for Human Prescription Drugs and Biologics; Requirements for Prescription Drug Product Labels'' (65 FR 81082, December 22, 2000). FDA believes that this approach will be most likely to reach the broadest consumer audience and minimize the cost to the pharmacy profession.

B. Labeling Not Covered Under this Proposed Rule

1. Physician Labeling

FDA is not proposing to modify the requirements for physician labeling at this time. Although consumers have access to physician labeling as reprinted in the Physician Desk Reference (PDR), physician labeling is not written for the consumer audience. In the **Federal Register** of December 22, 2000, the agency issued a proposed rule to revise the physician labeling requirements in 21 CFR 201.56 and 201.57 (the physician labeling rule). The proposed changes to the labeling format included the addition of adverse drug reaction reporting contact information for health care practitioners, including FDA's toll-free MedWatch telephone number. Because physician labeling is directed to health care practitioners, and FDA anticipates that this labeling will be updated with the toll-free MedWatch number, the agency is not proposing modifications to physician labeling at this time. However, FDA is soliciting comments on this issue.

2. PPIs

PPIs are required by FDA for certain drug products, including oral contraceptives and estrogen drug products (§§ 310.501 and 310.515 (21 CFR 310.501 and 310.515)). Some manufacturers also voluntarily produce PPIs for drug products. PPIs are an extension of physician labeling and are often distributed to consumers when the

drug product is dispensed. FDA is not proposing to require the side effects statement in PPIs at this time because the proposed requirement in this rule that pharmacies distribute the side effects statement will ensure that a broad consumer audience receives it. FDA believes that requiring changes to PPIs in addition is unnecessary; however, FDA is soliciting comments on this issue. Manufacturers may provide the side effects statement voluntarily in PPIs.

C. Benefits of the Proposed Rule to Public Health

FDA has determined that this proposed rule will promote the agency's mission to protect the public health by informing consumers of FDA's adverse event reporting program under MedWatch. Data reported as a result of this proposed rule will supplement data currently reported and assist the agency in identifying trends in reported adverse events for specific drug products. These data may result in a review of the safety and/or effectiveness of particular drug products on the market. Once an adverse event or product problem is identified, the agency can initiate various actions to address the problem, such as labeling changes (*e.g.,* boxed warnings), medical or safety alerts to health care practitioners, and product withdrawals. For further discussion of the benefits of this proposed rule, see the agency's analysis of economic impacts in section V.C of this document.

D. Specific Proposed Changes to the Regulations

1. Side Effects Statement

Section 17 of the BPCA requires that the labeling for each drug approved under section 505 of the act include: (1) A toll-free number maintained by FDA for the purpose of receiving reports of adverse events regarding drug products, and (2) a statement that the number is to be used for reporting purposes only, not to seek medical advice. FDA has considered these requirements and has developed a conforming statement: "Call your doctor for medical advice about side effects. You may report side effects to FDA at 1–800–FDA–1088.'' FDA believes this statement comports with the mandate in the BPCA and is brief enough to convey the appropriate message and fit on the labeling of drug products. However, FDA is soliciting comments on the wording of the proposed statements. As stated previously in this document, FDA is using the established MedWatch toll-free number for consumer reporting. For OTC products, the side effects statement has been modified to correspond to the specific requirements for OTC drug product labeling. FDA consulted with an agency communications specialist in developing the side effects statement.

FDA is proposing that the side effects statement first direct consumers to call their doctor for medical advice. FDA is concerned that consumers may misinterpret a statement to report side effects and call the agency at the time they or members of their family experience a side effect, rather than calling their own doctor for immediate, and possibly critical, medical advice. To make it clear that consumers experiencing side effects and in need of medical advice should call their doctor first, FDA has included the first sentence instructing consumers to call their doctor for medical advice.

FDA is proposing to use the term "side effects'' rather than "adverse events'' because of concern that some consumers may not understand the meaning of the term "adverse event.'' FDA believes the term "side effects'' will be understood by a broader consumer audience than would the term "adverse event.''

The current MedWatch program distinguishes serious adverse events, defined in 21 CFR 314.80, as those where the patient outcome is: death, life threatening (real risk of dying), hospitalization (initial or prolonged), disability (significant, persistent or permanent), congenital anomaly, or required intervention to prevent permanent impairment or damage. The BPCA does not qualify the type of adverse event reported to the toll-free number. Therefore, FDA is not proposing that consumers report only serious adverse events to the MedWatch program. This is likely to result in more reports to FDA than under the existing system. The agency solicits comments on whether the term "side effects'' should be further qualified.

2. Medication Guides

FDA-approved Medication Guides are required for prescription drug products that the agency has determined pose a serious and significant public health concern. Because these products have increased risks, FDA believes that the side effects statement should be included in Medication Guides required for drug products approved under section 505 of the act.

Part 208 (21 CFR part 208) sets forth the requirements for this type of patient labeling. Medication Guides provide information when FDA determines that the information is necessary to patients' safe and effective use of drug products. Medication Guides have been approved for approximately 18 prescription drug products, only some of which are approved under section 505 of the act. Some biological products have Medication Guides, but those products are not approved under section 505 of the act, and therefore are not covered by these BPCA provisions. These provisions would apply, however, to any biological products approved under section 505 that carry Medication Guides.

FDA is proposing that manufacturers be required to include the side effects statement under the heading, "What are the possible or reasonably likely side effects of (name of drug)?''. Manufacturers who ship drug products for which a Medication Guide is required are responsible for ensuring that the Medication Guide is available for distribution to patients by providing sufficient numbers of Medication Guides to authorized dispensers of drug products. Consumers who receive the appropriate Medication Guide with their dispensed prescription drug product will be made aware of FDA's toll-free number to report side effects by reading the appropriate section of the Medication Guide.

Under § 208.20(a)(4), the letter height or type size for Medication Guides must be no smaller than 10 points (1 point = 0.0138 inches). FDA is not proposing to modify this requirement; therefore, the side effects statement in Medication Guides will appear in no smaller than 10-point letter height or type size.

While FDA is not requiring manufacturers to add the side effects statement to Medication Guides for those drug products not approved under section 505 of the act, manufacturers may do so voluntarily.

3. OTC Labeling

Because certain OTC drug products are approved under section 505 of the act, FDA is proposing that the labeling of those products approved under NDAs or ANDAs must also contain the side effects statement as mandated by the BPCA. FDA estimates that there are approximately 350 OTC products approved under an NDA and 172 approved under an ANDA.

In 1999, FDA published a final rule on the labeling of OTC drug products. The final rule was intended to assist consumers in reading and understanding OTC drug product labeling and introduced a new format (drug facts format). In this proposed rule, FDA has modified the side effects statement for OTC products to correspond to the drug facts format. Section 201.66 (21 CFR 201.66) addresses format and content

requirements for OTC drug product labeling. Section 201.66(c) lists the content requirements for OTC drug product labeling, and § 201.66(d) specifies the format requirements for OTC drug product labeling, including the letter height and type size.

The format and content labeling requirements for OTC drug products in § 201.66 include specific subheadings for presenting ''warnings'' information. The subheading in § 201.66(c)(5)(vii) is ''Stop use and ask a doctor if''. The agency considers this language similar to the language in the first sentence of the side effects statement for prescription drug products that advises patients to ''Call your doctor for medical advice about side effects.'' Accordingly, for OTC drug products, the agency is proposing to use the existing subheading in § 201.66(c)(5)(vii) and include after it the bulleted statement ''side effects occur.'' The second sentence would remain the same as for prescription products: ''You may report side effects to FDA at 1–800–FDA–1088.'' This approach incorporates the side effects statement in OTC product labeling in the appropriate location, using existing consumer-friendly language and a minimal amount of additional labeling space.

The letter height or type size for subheadings and all other information described in §§ 201.66(c)(2) through (c)(9) in OTC labeling is no smaller than 6-point letter height or type size (§ 201.66(d)(2)). Therefore, the OTC side effects statement would appear in a minimum 6-point letter height or type size. Consistent with § 201.66(c)(9), the telephone number would appear in a minimum 6-point bold letter height or type size. This requirement is repeated in the revisions to § 201.66(c)(5)(vii).

4. Pharmacy Provisions

FDA is proposing to add new part 209 (21 CFR part 209) to the regulations to require pharmacies and authorized dispensers to distribute the side effects statement to consumers with each prescription drug product approved under section 505 of the act. Under this part, the term ''pharmacies'' includes, but is not limited to, retail, mail-order, hospital, university, or clinic pharmacies, as well as public health agencies that dispense prescription drugs. The term ''authorized dispenser'' means an individual licensed, registered, or otherwise permitted by the jurisdiction in which the individual practices to provide drug products on prescription in the course of professional practice. The term includes health care practitioners who dispense prescription drug products from their offices, but does not include the dispensing of drug samples. FDA does not intend that part 209 apply to health care practitioners administering medication to inpatients in a hospital or health care facility under an order of a licensed practitioner, or as part of supervised home health care. FDA believes that patients receiving drugs under these circumstances will rely on their health care practitioners to monitor and report adverse events.

While section 17 of the BPCA requires FDA to reach the broadest consumer audience, it also requires FDA to minimize costs to the pharmacy profession. To minimize the cost of the requirement for pharmacists to distribute the side effects statement, FDA is proposing to provide a range of options from which pharmacists may choose. These options are included in proposed § 209.11(b). FDA invites comments on other options pharmacies might use to distribute the side effects statement.

Proposed § 209.11(b) provides that pharmacies and authorized dispensers may choose one of the following methods, or any combination of the following methods, to distribute the side effects statement to consumers: (1) Attach a standard-size sticker (1 1/2 by 7/16 inches) containing the side effects statement to the vial, package, or container of the prescription drug product; (2) use a pharmacy prescription vial cap preprinted with the side effects statement; (3) distribute a separate sheet of paper containing the side effects statement; (4) distribute consumer medication information such as that provided by pharmacy software and third party data processing vendors that contains the side effects statement; or (5) distribute the appropriate FDA-approved Medication Guide that contains the side effects statement.

a. *Option 1—sticker*. The first option for distribution of the side effects statement by pharmacies and authorized dispensers is to attach a standard-size pharmacy sticker to the unit package, vial, or container of the prescription drug product dispensed to the consumer. FDA is proposing that the letter height or type size of the side effects statement on any sticker attached to the unit package, vial, or container of a prescription drug product be no smaller than 6 points. The side effects statement should be printed in any single, clear, easy-to-read type style. To minimize the cost of this option for pharmacies, FDA has determined that the proposed side effects statement will fit on a standard-size (1 1/2- by 7/16-inch) pharmacy sticker.

FDA recognizes there may be reasons that the sticker option is not practicable for some drug products, e.g., the packaging of the drug product is too small to accommodate a sticker, or there are stickers already necessary that preclude adding another. FDA is not proposing to require this option. Therefore, a pharmacy or authorized dispenser may choose any other option.

b. *Option 2—preprinted vial cap*. The second option for distribution of the side effects statement by pharmacies and authorized dispensers is to use a pharmacy prescription vial cap preprinted with the side effects statement. As with the sticker option, FDA is proposing that the letter height or type size of the side effects statement be no smaller than 6 points. The side effects statement should be printed on the vial cap in any single, clear, easy-to-read type style. Use of a preprinted vial cap should be useful when the necessary number of stickers on a prescription vial precludes the addition of another sticker.

c. *Option 3—separate sheet of paper*. The third possible method of distribution is to provide a separate sheet of paper with the side effects statement to consumers. FDA is proposing that the letter height or type size of the side effects statement be no smaller than 10 points to ensure readability. The side effects statement should be in a single, clear, easy-to-read type style. FDA is not proposing any further requirements on how this information is presented. The agency believes that this flexibility will allow pharmacies and authorized dispensers who choose this option to use existing systems to meet this requirement.

d. *Option 4—consumer medication information*. Some pharmacies voluntarily distribute written information about prescription drug products to consumers as part of patient medication counseling activities (consumer medication information). This information is often attached to or placed in the bag into which the pharmacist puts the prescription drug product prior to providing it to the consumer. Consumer medication information is often produced by third party data processing vendors. Therefore, FDA is providing pharmacies and authorized dispensers with the option of complying with this regulation by providing the consumer with consumer medication information updated to include the side effects statement. FDA is proposing that the letter height or type size of the side effects statement be no smaller than 10 points to ensure readability. Distributing this consumer medication information

with each original and refill prescription dispensed to consumers will satisfy the requirements of this part.

e. *Option 5—FDA-approved medication guides.* FDA is proposing that manufacturers include the side effects statement in FDA-approved Medication Guides for drug products approved under section 505 of the act. Medication Guides are typically produced by the manufacturer of the drug product. By regulation manufacturers are required to provide Medication Guides or the means to produce them to authorized dispensers for distribution to the patient (§ 208.24). Medication Guides are required to be printed in no smaller than 10-point letter height or type size. Pharmacists and other authorized dispensers may comply with this regulation by distributing Medication Guides that include the side effects statement for those drug products approved under section 505. Pharmacists and other authorized dispensers will need to choose a different compliance option if an FDA-approved Medication Guide for a drug product approved under section 505 of the act has not yet been updated with the side effects statement, or if the prescription drug product they are dispensing does not have a Medication Guide.

III. Legal Authority

Section 17 of the BPCA requires the agency to issue a final rule mandating that the labeling of each drug approved under section 505 of the act include the toll-free number for reporting adverse events regarding drugs and a statement that the number is for reporting purposes only, not to seek medical advice. The legislation gives FDA broad discretion in designing the rule, requiring only that the labeling requirement be implemented so as to reach the broadest consumer audience and minimize the cost of the rule on the pharmacy profession.

The proposed rule satisfies these two statutory requirements. The proposed rule covers prescription and OTC drugs approved under section 505 of the act, and would require manufacturers, authorized dispensers, and pharmacies to include the side effects statement on certain drug product labeling. The scope of the proposed rule includes these individuals and entities because they all participate in labeling drug products approved under section 505 of the act. Drug manufacturers are subject to comprehensive regulation of drug product labeling under the act and its implementing regulations (e.g., 21 U.S.C. 352, 21 CFR part 201), and section 17 of the BPCA explicitly extends FDA's authority to the side effects statement. Likewise, authorized dispensers (including pharmacists) and pharmacies are subject to statutory labeling requirements under section 503(b)(2) of the act, and the BPCA contemplates that pharmacies and authorized dispensers will distribute the side effects statement with prescription drug products approved under section 505. Including manufacturers, authorized dispensers, and pharmacies within the scope of the proposed rule will ensure that the side effects statement reaches the broadest consumer audience.

FDA is proposing several compliance options for authorized dispensers and pharmacies in order to minimize the cost of the rule on the pharmacy profession. Of these options, authorized dispensers and pharmacies may choose the least costly means to distribute the side effects statement with prescription drug products. FDA recognizes that some pharmacists voluntarily provide consumer medication information to patients. Those who do so may put the side effects statement in that voluntarily provided information, or they may choose to comply using one or more of the other options the agency has proposed. The other options include distributing the side effects statement on: (1) A sticker attached to the unit package, vial, or container of the drug product; (2) a preprinted pharmacy prescription vial cap; (3) a separate sheet of paper; or (4) an FDA-approved Medication Guide, if appropriate.

IV. Proposed Effective Date

FDA considered issuing this rule as an interim final rule to be effective 30 days after the date of its publication in the **Federal Register**. The BPCA directs FDA to issue a final rule within 1 year of the date of the BPCA's enactment on January 4, 2002. FDA is issuing this rule as a proposal, however, to allow the affected entities, including manufacturers and pharmacies, to comment on the proposed changes to the regulations.

FDA is proposing that the final rule be effective 30 days after it is published in the **Federal Register**. FDA is proposing that all manufacturers of drug products, authorized dispensers, and pharmacies be in compliance not more than 1 year after the effective date of any final rule published in the **Federal Register**. FDA anticipates that manufacturers of drug products, authorized dispensers, and pharmacies will require time to update labeling and systems to comply with the new requirements.

Manufacturers of drug products that require FDA-approved Medication Guides will need time to update these Medication Guides with the side effects statement and to distribute them to distributors, packers, and authorized dispensers. Manufacturers who make changes to FDA-approved Medication Guides can submit labeling changes in annual reports as described in § 314.70(d) (21 CFR 314.70(d)) as a minor change in labeling and need not submit a supplemental application to the agency for preapproval.

Manufacturers of OTC drug products will require time to update OTC labeling to make it available to consumers. Manufacturers of OTC drug products approved under an NDA can submit their labeling changes in their annual reports according to § 314.70(d)(3) and need not submit a supplemental application to the agency for preapproval. Manufacturers of OTC drug products approved under an ANDA may also submit these changes in their annual reports according to § 314.70(d)(3) and § 314.97 (21 CFR 314.97) and need not submit a supplemental application to the agency for preapproval.

Pharmacies will require adequate time to make decisions about their least-cost option to comply with the rule and either implement new systems or update established systems. To decrease the burden of this rule on pharmacies and authorized dispensers, as required by the BPCA, FDA is proposing that 1 year should provide adequate time to comply with this rule. However, FDA is soliciting comments on this proposed compliance date.

Manufacturers of products with Medication Guides not approved under section 505 of the act who voluntarily make changes to Medication Guides to include the side effects statement can submit labeling changes in annual reports as described in § 601.12(f)(3)(i)(A) as a minor change in labeling and need not submit a supplemental application to the agency for preapproval. Manufacturers who voluntarily make changes to PPIs required under §§ 310.501 and 310.515 can submit labeling changes in annual reports as described in § 314.70(d) as a minor change in labeling and need not submit a supplemental application to the agency for preapproval.

V. Analysis of Economic Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory

alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency believes that this rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. The proposed rule would require pharmacies and authorized dispensers to provide patients with the side effects statement and require drug manufacturers to include the statement on labeling of certain drug products. Potential one-time costs of the proposed rule are projected to range from $1.3 million to $3.7 million with annual compliance costs from $9.2 million to $22.1 million. Annualized for 10 years, total compliance costs would be approximately $9.3 million to $22.6 million at 3 percent discount rate, and $9.4 million to $22.6 million at 7 percent discount rate. Although the agency is unable to quantify the potential benefits of the proposed rule at this time, improved awareness of drug safety reporting may increase the number of serious adverse drug reactions reported by consumers and health care practitioners to the MedWatch program. Potential benefits of the proposed rule are discussed in section V.B of this document. Furthermore, the agency has determined that the proposed rule is not an economically significant rule as described in the Executive order, because annual impacts on the economy are substantially below $100 million. Because the rule does not impose any mandates on State, local or tribal governments, or the private sector that will result in an expenditure in any one year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act. The current inflation-adjusted statutory threshold is about $110 million. With respect to the Regulatory Flexibility Act, the agency believes it is unlikely that this proposed rule will result in a significant economic impact on a substantial number of small entities.

The proposed rule would fulfill the BPCA's statutory requirement to provide consumers with a toll-free telephone number that can be used to report adverse drug events to FDA. The agency believes it receives reports for only a portion of the adverse drug events that occur. Providing consumers with this telephone number is expected to increase public awareness of, and participation in, the agency's voluntary adverse drug events reporting program. To ensure that the side effects statement would cover all drug products approved under section 505 of the act and reach a wide consumer audience as specified in the statute, FDA proposes that labeling of OTC drug products and any required Medication Guide for a drug product approved under section 505 must include the side effects statement, and the side effects statement must accompany each prescription dispensed for outpatient use. The agency also proposes to exercise its discretion to give affected pharmacies flexibility to select a method of compliance from among five options that would minimize the impact of the proposed rule. For a discussion of the alternatives FDA considered in drafting this proposed rule, see section V.C of this document. The rule FDA proposes is the least-expensive alternative that meets the requirements set forth in section 17 of the BPCA.

A. Costs of Regulation

1. Pharmacy Industry

Both retail and nonretail pharmacies may dispense prescription drugs to patients. Retail channels include independent drug stores, chain drug stores, mass merchants, grocery stores with pharmacies, and mail/Internet services. Nonretail channels include health maintenance organizations (HMOs), hospital outpatient pharmacies, offices of health care practitioners, and ambulatory care clinics. Although several sources of information about the retail pharmacy sector exist, data on the number of ambulatory care centers or hospital outpatient departments dispensing prescription drugs are limited.

a. *Number of affected pharmacies.* The proposed rule may affect all locations where an authorized dispenser distributes prescription drug products for outpatient use. According to the NACDS, in 2001 there were 55,581 retail pharmacies, excluding mail order businesses (Ref. 1). Census data from 1997 show there were 314 mail order or electronic shopping establishments with merchandise sales from prescriptions (Ref. 2). In addition, the agency tallied the number of establishments with receipts or revenue from drug products in Health Care and Social Assistance sectors using 1997 Economic Census data (Ref. 3). The Health Care sector data use a single revenue code for nonprescription and prescription drugs. Businesses with receipts or revenues from drug products that would not be licensed to dispense prescriptions (*e.g.,* chiropractors) or would be administering drugs directly to patients (*e.g.,* supervised home health care) were excluded from the analysis.

A study conducted for FDA found that, on average, 89 percent of retail pharmacies currently give patients some type of written consumer medication information (Ref. 4). It is uncertain whether this percentage also represents nonretail pharmacies. Nevertheless, for this analysis we assume that clinics and HMOs are similar to retail pharmacies, distributing consumer medication information with 89 percent of the dispensed prescriptions. In addition, hospital outpatient services and health care practitioners' offices are assumed currently to provide no written drug information. The agency solicits comment on these assumptions.

Whether provided by a third party vendor or prepared in-house, it is anticipated that the side effects statement can be added to existing databases at a negligible one-time cost. Since the statement is not expected to increase the length of existing documents, the agency has assumed that only pharmacies and authorized dispensers not currently providing written consumer medication information will incur compliance costs and be affected by the rule. FDA requests comment on this assumption. Table 1 of this document shows the total number of establishments dispensing prescriptions and the number anticipated to be affected by the proposed rule.

TABLE 1.—ESTIMATED NUMBER OF AFFECTED RETAIL AND NONRETAIL PHARMACIES

Type of Pharmacy	Total No. of Pharmacies	Percentage Not Providing Written Drug Information	No. of Affected Pharmacies
Retail Outlets			
Grocery Store[1]	8,531	11%	938
Independent Pharmacy[1]	20,647	21%	4,336
Mail Order/Electronic Shopping[2]	314	11%	35
Mass Merchant[1]	5,910	2%	118
Traditional Chain Store[1]	20,493	2%	410
Nonretail Outlets:			
HMO Medical Center[3,4]	209	11%	23
Hospital Outpatient Service[3,5]	5,878	100%	5,878
Office of Health Care Practitioner[3,6]	7,867	100%	7,867
Outpatient Care Center, except HMO[3,7]	1,881	11%	207
Total of all Affected Outlets	71,730		19,812

[1] Source: Ref. 1.
[2] Source: Ref. 2, Table 2. Includes number of establishments in North American Industry Classification System (NAICS) code 454110 with merchandise sales for code 0161.
[3] Source: Ref. 3, Tables 1a and 1b.
[4] Includes number of establishments in NAICS 621491 with receipts or revenue from code 8619. Excludes nonemployer statistics.
[5] Includes number of establishments in NAICS 622 with receipts or revenue from outpatient services (code 5250). Excludes nonemployer statistics.
[6] Includes number of establishments in NAICS 62111, 62121, 62132, 62139, with receipts or revenue from code 8619. Excludes nonemployer statistics.
[7] Includes number of establishments in NAICS 62141, 62142, 621492, 621493, 621498, with receipts or revenue from code 8619. Excludes nonemployer statistics.

b. *Prescriptions dispensed*. For those pharmacies not providing written consumer medication information, the compliance costs of the proposed rule would be proportional to the number of outpatient prescriptions that affected pharmacies dispense annually. Consequently, smaller pharmacies dispensing fewer prescriptions than larger pharmacies would incur lower costs. Moreover, the proposed rule requires distributing the side effects statement with both new and refill prescriptions. Since individuals with multiple chronic conditions could potentially receive the side effects statement many times each year, the agency solicits comment on whether the statement could be distributed less frequently to this subset of individuals without increasing the burden on pharmacies.

IMS Health collects data on the number of prescriptions dispensed as well as the number of pharmaceutical products purchased by the retail channels. In contrast, only data on the number of products purchased by nonretail channels are available. Because the types of drugs and dosage forms dispensed to outpatients are expected to be similar for retail and nonretail channels, the agency uses IMS data from both channels to derive estimates of the number of prescriptions dispensed annually by nonretail pharmacies (IMS Health, National Prescription Audit *Plus*, Provider Perspective, Retail Perspective, see appendix for details). Based on volume from 2001, pharmacies are estimated to dispense between 3.28 billion and 3.64 billion prescriptions to outpatients each year (table 2 of this document). However, this number is expected to increase over time. Estimates from NACDS predict that future drug use will increase approximately 26 percent by the year 2005 (Ref. 1). The agency requests comment on these estimates.

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Table 2.--Estimated Number of Outpatient Prescriptions by Type of Pharmacy

Retail Outlets:	Prescriptions Dispensed (million)	
Grocery Store[1]	426.5	
Independent Pharmacy[1]	778.7	
Mail Order or Electronic Shopping[1]	163.5	
Mass Merchant[2]	311.0	
Traditional Chain Store [2]	1,418.0	
	Range of Prescriptions Dispensed(million) [3]	
Nonretail Outlets:	From:	To:
HMO Medical Center	16.6	25.4
Hospital Outpatient Service	98.2	317.1
Office of Health Care Practitioner	8.2	9.2
Outpatient Care Center, except HMO	62.6	194.0
Total Outpatient Prescriptions	3,283.2	3,643.4

[1] Source: IMS Health, National Prescription Audit Plus™, Year 2001, data extracted June 2002.
[2] Source: Ref. 1.
[3] See appendix for methodology used to estimate the number of nonretail prescriptions. Sources: IMS Health, National Prescription Audit Plus™, Year 2001, Data Extracted June 2002; IMS Health, Provider Perspective™, Year 2001, Data Extracted June 2002; IMS Health, Retail Perspective™, Year 2001, data extracted June 2002.

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c. *Compliance costs for pharmacies.* The proposed rule provides several compliance options, allowing pharmacies and authorized dispensers flexibility to select the least costly compliance method. The proposed rule describes five ways pharmacies and authorized dispensers can distribute the side effects statement to patients. These methods may be used individually or together in any combination, and include: (1) Attaching a standard-size sticker to the prescription container, (2) distributing a separate sheet of paper, (3) distributing consumer medication information containing the side effects statement, (4) using an imprinted vial cap, or (5) distributing the appropriate FDA-approved Medication Guide. Moreover, the widespread and growing use of electronic communication presents the opportunity to innovatively inform consumers about public health. FDA solicits suggestions on possible electronic methods to distribute the side effects statement that would comply with the BPCA's statutory mandate, and comment on what burden such solutions might impose on pharmacies and drug manufacturers. FDA also requests comment on whether electronic means of distributing the side effects statement would be consistent with the statutory definition of "labeling.''

The magnitude of the compliance costs will depend on whether a pharmacy is currently using one or more of these methods. For example, although third party vendors of consumer medication information software would incur negligible one-time costs modifying their databases to include the side effects statement, FDA believes that pharmacies using this type of software will incur no additional costs. Similarly, if a drug information database is managed in-house and the pharmacy is already handing out consumer medication information to patients, only a negligible one-time cost to add the statement may be incurred. For prescription drug products with Medication Guides, pharmacies and authorized dispensers will incur no additional costs since they are already required to distribute Medication Guides with those products. Outlets already using imprinted vial caps that elect to add the statement to the cap may incur negligible one-time costs to prepare a new stamping template. In contrast, switching from a non-imprinted vial cap to one imprinted with the side effects statement might increase the cost of each vial cap by an estimated 15 percent.

Some pharmacies, however, might incur new costs for each prescription they dispense. To illustrate the potential impact, the agency calculates the associated costs to affix a sticker, preprinted with the statement, on the prescription container. The agency believes that this option reflects the highest potential cost of the proposed rule to pharmacies and authorized dispensers. A box of series 1 preprinted stickers contains 1,000 stickers at a cost of $2.90, or $0.003 per sticker. In addition to the cost of the sticker, pharmacy personnel may spend about 5 minutes per 1,000 stickers for ordering and inventory control and 5 seconds to affix each sticker to the container. Although in some small establishments a pharmacist may perform these tasks, a pharmacy technician or pharmacy school intern would probably perform these actions. Therefore, a range of labor costs are calculated with a pharmacy technician's mean and 90 percentile loaded hourly wage rates of $14.53 and $20.38, respectively, including 40 percent for benefits (Ref. 5). The annual costs of the proposed rule for affected retail pharmacies may range from $6.4 million to $8.7 million, and from $2.8 million to $11.5 million for nonretail pharmacies. If the entire affected pharmacy industry complied using this option, the proposed rule may cost from $9.2 to $20.2 million annually (table 3 of this document).

Pharmacies could also elect to hand out a piece of paper printed with the side effects statement. Costs for this option depend on the size and quality of the paper. However, based on retail prices, a single sheet of paper and the ink to print the side effects statement cost approximately $0.013. A sheet of paper can comfortably accommodate from 8 to 20 statements in 10-point font, depending on the spacing between statements. Thus, the per statement cost of materials for this option ranges from about $0.001 to $0.002, substantially less than the sticker option. However, because the time required to cut up a piece of paper and distribute it with the prescription may exceed the time needed to affix a sticker, the average total cost to distribute a piece of paper is anticipated to be similar to the average total cost of the sticker option.

TABLE 3.—POTENTIAL COMPLIANCE COSTS FOR PHARMACIES[1]

Type of Pharmacy	No. of Affected Outlets	Average No. of Dispensed R_x[2]	Cost of Stickers ($ mil)	Labor Costs ($ mil)	Total Cost ($ mil)
Retail Outlets:					
Grocery Store	938	49,997	$0.14	$1.00 to $1.41	$1.14 to $1.54
Independent Pharmacy	4,336	37,714	$0.47	$3.50 to $4.91	$3.97 to $5.38
Mail Order or Electronic Shopping	35	520,732	$0.05	$0.38 to $0.54	$0.44 to $0.59
Mass Merchant	118	52,623	$0.02	$0.13 to $0.19	$0.15 to $0.20
Traditional Chain Store	410	69,194	$0.08	$0.61 to $0.85	$0.69 to $0.93
Retail Subtotal	5,837		$0.76	$5.63 to $7.89	$6.39 to $8.66
Nonretail Outlets:					
HMO Medical Center	23	79,244 to 121,688	$0.01 to $0.01	$0.04 to $0.08	$0.04 to $0.09
Hospital Outpatient Service	5,878	16,704 to 53,947	$0.28 to $0.92	$2.10 to $9.52	$2.39 to $10.44
Offices of Health Care Practitioner	7,867	1,042 to 1,171	$0.02 to $0.03	$0.18 to $0.28	$0.20 to $0.30
Outpatient Care Center, except HMO	207	33,262 to 103,126	$0.02 to $0.06	$0.15 to $0.64	$0.17 to $0.70
Nonretail Subtotal	13,975		$0.33 to $1.02	$2.46 to $10.52	$2.80 to $11.53

TABLE 3.—POTENTIAL COMPLIANCE COSTS FOR PHARMACIES[1]—Continued

Type of Pharmacy	No. of Affected Outlets	Average No. of Dispensed R_x[2]	Cost of Stickers ($ mil)	Labor Costs ($ mil)	Total Cost ($ mil)
Industry Total	19,812		$1.10 to $1.78	$8.09 to $18.41	$9.19 to $20.19

[1] Totals may not sum due to rounding.
[2] Average number of dispensed Rx calculated by dividing the number of prescriptions dispensed in Table 2 of this document by the total number of pharmacies in Table 1 of this document.

2. Drug Manufacturers

a. *Number of affected products*. The proposed rule requires that, within 1 year of the effective date of the final rule, manufacturers of OTC drugs approved under section 505 of the act add the side effects statement to drug product labeling, and manufacturers of any prescription drug product with an FDA-approved Medication Guide add the side effects statement to that Medication Guide. The agency estimates that the rule may affect approximately 522 OTC products, including 350 branded and 172 private label products, and up to 18 prescription drug products with Medication Guides.

b. *Cost to modify product labeling*. The proposed rule requires that the side effects statement be included in the "Warning(s)'' section of the "Drug Facts'' box, adding 101 characters to drug product labeling. Because of the brevity of the statement, the agency anticipates that manufacturers of the affected products may incur a one-time cost to modify labeling, but no additional incremental printing or packaging modification costs. The agency solicits comment on this assumption. OTC products marketed under NDAs or ANDAs usually have 2 to 3 stockkeeping units (SKUs), suggesting that up to 1,050 branded packages and 520 private label packages might be affected by the final rule. Revising labeling of branded OTC products may cost about $3,000 for each branded SKU and $1,000 for each private label SKU. Because nonprescription drug manufacturers often use the packaging of OTC products to market their products and change labeling frequently, some labeling costs of the proposed rule would be incurred in the normal course of business. Thus, the per SKU cost estimates are an upper bound. New compliance costs for nonprescription drug manufacturers may range from $1.2 million with one SKU per affected product to $3.7 million with three SKUs per affected product. The agency solicits comment on the number of SKUs affected by the proposed rule and the potential new compliance costs to revise the product labeling of these SKUs.

Manufacturers of prescription drug products change labeling less frequently than OTC manufacturers and therefore may also incur some excess inventory loss because of the 12-month implementation period. Including excess inventory loss and scrap of $1,463, adding the statement to Medication Guides may cost manufacturers an average of $4,177 per product. Within the first year, OTC and prescription drug manufacturers together might incur one-time costs from $1.3 million to $3.7 million to comply with the proposed rule. Annualized for 10 years, compliance costs would range from $0.2 million to $0.4 million at 3 percent discount rate, and from $0.2 million to $0.5 million at 7 percent discount rate.

3. Burden on FDA

Approximately 100 calls are received each week by the MedWatch program. When a consumer contacts the agency directly by telephone, a MedWatch 3500 form and instructions are mailed. Because some questions on the MedWatch 3500 form request clinical information, the instructions recommend that patients work with their health care practitioner to complete the form. However, the confidential nature of the reporting program makes it difficult to track the number of forms consumers return to the agency. In 2001, consumers submitted 1,788 direct reports. This suggests that roughly one-third of the mailed forms are returned.

It is uncertain if receiving the side effects statement with dispensed prescriptions will cause more consumers to call the MedWatch program and report their drug side effects. According to an agency communications specialist, it is likely that some consumers may call the toll-free number with questions or comments unrelated to the intended purpose of safety reporting. Moreover, health care practitioners can report serious adverse drug events to the agency by telephone. From 1998 to 2001, an average of 718 such telephone reports were submitted annually. Even though health care practitioners are not the direct focus of the proposed rule, it is possible that the rule may cause an increase in direct reporting from health care practitioners. Although the agency cannot predict the additional number of calls and reports that might result from the proposed rule, the impact on the agency could be substantial.

It costs the agency an average of $5.60 for each consumer call to the MedWatch program to answer the telephone, process the call, and mail the MedWatch form. Once the MedWatch form is returned, the agency may spend up to $25.00 processing the form and entering the data in the Adverse Events Reporting System (AERS). If only one-third of the calls to MedWatch produce an adverse drug event report, each consumer report would cost the agency about $41.80. However, if every telephone call produces a consumer report, the per report cost decreases to $30.60. Furthermore, reports submitted directly to the MedWatch Website would only cost $25 since there are not additional costs to answer and process the telephone call. Moreover, if there is a substantial increase in the number of telephone calls, the agency might also incur fixed costs for additional telephone and computer equipment.

MedWatch data suggest that telephone reports from practitioners account for approximately 5 percent of the direct reports submitted by mail, facsimile, or telephone. In contrast to consumer reports, telephone reports from health care practitioners may take up to 1.25 hours to process, costing the agency an estimated $67.31 ($53.85 per hour x 1.25 hours). However, the agency does not know the number and source of new direct calls and reports it might receive in response to this rule. Therefore, table 4 presents five scenarios to illustrate the possible impact of the proposed rule on the agency if the volume of consumer calls increased by approximately 0.05 percent, 1 percent, 50 percent, 500 percent, or 1,000 percent over current levels. Because the 3-to-1 relationship of calls to reports could vary, each

scenario shows the impacts on the agency with a range of 1 to 3 calls for each direct report submitted to MedWatch by consumers. Variable costs for FDA could range from $42 to $1,923,308 annually. The agency solicits comments from industry on their experience with consumer telephone calls to toll-free numbers and the proportion of the calls related to safety issues.

TABLE 4.—POTENTIAL ANNUAL COST OF INCREASED DIRECT CALLS AND REPORTS TO FDA'S MEDWATCH PROGRAM[1]

	Potential Scenarios[2]				
	1	2	3	4	5
No. of Additional Calls Received	3	60	3,000	30,000	60,000
No. of Additional Reports Returned by Mail or Fax	1 to 3	20 to 60	1,000 to 3,000	10,000 to 30,000	20,000 to 60,000
Potential Cost for Additional Calls and Direct Reports[3]	$42 to $92	$836 to $1,836	$41,800 to $91,800	$418,000 to $918,000	$836,000 to $1,836,000
No. of Telephone Reports from Health Care Practitioners[4]	0	1	50	500	1,000
Potential Cost for Telephone Reports from Practitioners	$0	$87	$4,365	$43,654	$87,308
Total Potential Annual Cost	$42 to $92	$923 to $1,923	$46,165 to $96,165	$461,654 to $961,654	$923,308 to $1,923,308

[1] Roughly one-third of the MedWatch calls from consumers result in a completed report being returned to FDA. However, calls from other sources may have better yields than calls from consumers. A new telephone call might yield between one and three new reports. Because of this uncertainty, each scenario presents a range of potential costs that could be associated with an increase in the number of telephone calls to MedWatch.

[2] Totals may not sum or multiply due to rounding.

[3] This estimate assumes that all direct consumer reports would be initiated by telephone calls to the MedWatch program and may overstate the potential costs if a substantial number of reports are submitted via the Internet.

[4] Based on FDA data, approximately 5 percent of direct reports received from sources other than the Internet are telephone reports from health care providers. Estimate corresponds to 5 percent of the lower limit of the potential number of new reports.

4. Total Potential Costs of Proposed Rule

As illustrated previously, affected pharmacies and authorized dispensers may incur negligible one-time costs or increased annual costs, FDA may incur increased annual costs, and affected drug manufacturers and third party vendors of consumer medication information may incur one-time costs in the 12 months following the effective date. Table 5 summarizes the range of potential costs of the rule. The agency requests comment on these estimates.

TABLE 5.—SUMMARY OF COMPLIANCE COSTS OF PROPOSED RULE[1]

Affected Sector	One-Time Costs ($ mil)	Annual Costs ($ mil)	Annualized Costs ($mil)	
			3 percent	7 percent
Retail Pharmacies		$6.4–$8.7	$6.4–$8.7	$6.4–$8.7
Nonretail Pharmacies		$2.8–$11.5	$2.8–$11.5	$2.8–$11.5
Drug Manufacturers	$1.3–$3.7		$0.2–$0.4	$0.2–$0.5
PPI Vendors	$0.0		$0.0	$0.0
FDA		$0.0–$1.9	$0.0–$1.9	$0.0–$1.9
Total	$1.3–$3.7	$9.2–$22.1	$9.3–$22.6	$9.4–$22.6

[1] Totals may not sum due to rounding.

B. Benefits of Regulation

The proposed rule would alert patients receiving prescription products to contact their doctor for medical advice about drug side effects and would provide a toll-free telephone number to report side effects to FDA.

All drug products have risks as well as benefits. Every year over 100 NDAs, including about 30 for new molecular entities, are approved in the United States (Ref. 6). Initial approval is based on the risks and benefits identified during the clinical trial phase of drug development. Although designed to detect common serious adverse drug reactions, premarketing clinical trials are not sufficiently large to detect very rare adverse events. Some uncertainty about the risks of approved drugs will always exist, requiring a system of postmarketing surveillance. In the United States, the agency's MedWatch program provides the mechanism for health care professionals and patients to voluntarily report serious adverse events and product problems.

Many adverse drug events in the outpatient setting are not systematically tracked and recorded. The agency

estimates it receives reports of between 1 and 10 percent of the actual adverse drug events that occur (Ref. 7). While drug manufacturers are required to notify FDA of certain adverse drug events, reports from individuals and health care professionals are voluntary. Consumers submitted only 8 percent of the 22,645 voluntary (i.e., direct) reports received by the agency in 2001. Increasing patient awareness of the MedWatch program may enhance patient participation. Moreover, since the agency encourages patients to report serious side effects through their provider, the proposed rule may also increase reporting from health care practitioners.

Drug-related illness costs society billions of dollars in direct medical care and lost productivity every year. Results of a large study of hospital discharge records conducted in Utah and Colorado suggest that adverse drug events cost society at least $42.5 billion each year of which only $18.5 billion would be considered preventable medication errors (Ref. 8). A recent revision of the 1995 Johnson and Bootman cost-of-illness model predicts that drug-related morbidity and mortality occurring in ambulatory care settings cost about $177.4 billion each year (Ref. 9).

The agency has no quantitative information about the value of additional drug safety reports that it might receive once the toll-free number is widely distributed to the public. Reports of adverse drug events provide the agency with "signals'' that a drug product might have previously unidentified risks. Once a signal is detected, the agency can decide whether further action is necessary to protect public health. The proposed rule has the potential to increase the number of direct reports being submitted, thereby providing the agency with more data about potential serious adverse drug events. Having more data may make it easier for the agency to detect signals about previously unknown risks of drugs. However, it is also possible that the toll-free number will encourage calls unrelated to drug product safety. Because the number and nature of calls that will be generated by the toll-free number are unknown, the agency cannot quantify the potential benefits of this rule. Moreover, findings of studies on the effectiveness of warning labels suggest that adding an additional sticker to an overcrowded prescription vial could dilute the impact of existing warnings (Ref. 10). Therefore, the agency solicits comment on the potential effects that could be anticipated from this rule.

C. Impact on Small Entities

1. The Need for the Proposed Rule

The Regulatory Flexibility Act requires the agency justify the need for the proposed rule. As described previously, the proposed rule fulfills the statutory requirement of the BPCA to provide consumers with a toll-free telephone number to report adverse drug events to FDA, along with a statement that the number is not to seek or obtain medical advice.

2. Description of the Affected Small Entities

a. *The pharmacy industry*. The proposed rule will affect pharmacies and authorized dispensers in both the Retail Trade sector and the Health Care and Social Assistance sector that dispense prescriptions to outpatients. For the purposes of this initial regulatory flexibility analysis, affected firms are considered small if they are: (1) A for-profit firm that meets the definition of small according to the current Small Business Administration (SBA) industry size standards; (2) an independently owned and operated, not-for-profit enterprise that is not dominant in its field; or (3) operated by a small governmental jurisdiction with a population of less than 50,000 individuals. Since SBA size standards differ from Census size categories, in the retail sector, all for-profit firms with receipts less than the Census size shown in table 6 of this document are considered small. Using Census data will slightly overestimate the number of small entities.

Although the agency knows of no data on the number of small retail entities dispensing pharmaceutical drugs, the Census Bureau reports the number of establishments with prescription drugs as a merchandise line, and the number of firms by annual sales categories. If the proportion of establishments with merchandise sales from prescription drugs is uniform across all size firms, approximately 26,621 small entities may dispense prescriptions. Furthermore, if the proportions in Table 1 of this document also apply equally to small entities (i.e., the proportion not currently distributing written drug information), approximately 4,879 small retail firms would be affected by the proposed rule (table 6 of this document). FDA solicits comment on these assumptions.

TABLE 6.—ESTIMATED NUMBER OF AFFECTED SMALL RETAIL FOR-PROFIT ENTITIES

Description of Business and NAICS Code	Census Size ($ mil)	SBA Size Standard ($ mil)	No. of Small Entities[1]	Share With Sales From R_x[2]	No. of Small Entities With Sales From R_x	Estimated No. of Affected Small Entities
Supermarkets and other grocery stores, except convenience (445110)	$25.0	$23.0	36,728	17.8%	6,543	720
Convenience stores (445120)	$25.0	$23.0	17,159	1.9%	320	35
Pharmacies and drug stores (4461101)	$10.0	$6.0	19,516	100.0%	19,516	4,098
Discount or mass merchandising department stores, excluding leased (4521102)	$25.0	$23.0	28	47.6%	13	0
Electronic shopping and mail-order houses (454110)	$25.0	$21.0	7,314	3.1%	229	25
Total			80,745		26,621	4,879

[1] Source: Table 4 in Ref. 11. May include small entities that do not dispense pharmaceutical drugs.

[2] Equals the percent of all establishments in the NAICS with sales from merchandise line code 0161 (*i.e.,* prescriptions). Source: Table 2 in Ref. 2.

In the Health Care and Social Assistance sector, both for-profit and not-for-profit entities may dispense prescriptions for outpatient use and would therefore be affected by the proposed rule. Census data exist on the number of establishments with receipts and revenues from prescription or nonprescription drugs as well as on firm size data. Table 7 of this document summarizes the estimated number of small for-profit firms with receipts from prescription or nonprescription drugs, and firms anticipated to be affected by the rule. Based on the Census receipt size most closely matching the SBA size standard and the share of for-profit establishments with receipts from prescription or nonprescription drugs (i.e., Receipt Line (RL) code 8619), there are approximately 6,855 small for-profit entities in this sector. (Again, using Census data slightly overestimates the number of small entities.) Applying the proportion of affected firms from table 1 of this document, an estimated 6,577 small for-profit firms may be affected by the rule.

TABLE 7.—THE NUMBER OF AFFECTED SMALL FOR-PROFIT NONRETAIL ENTITIES

Description of Business and NAICS Code	Census Size ($ mil)	SBA Size Standard ($ mil)	No. of Small Entities[1]	Share of All Non-retail Outlets With Receipts From R_x[2]	No. of Small Entities With Receipts From R_x	Estimated No. of Affected Small Entities
Offices of physicians (62111)	$10.0	$8.50	151,479	2.8%	4,177	4,177
Offices of dentists (62121)	$10.0	$6.00	101,932	1.3%	1,280	1,280
Offices of optometrists (62132)	$10.0	$6.00	14,570	3.0%	441	441
Offices of other health care practitioners (62139)	$10.0	$6.00	11,678	3.5%	404	404
Family planning centers (62141)	$10.0	$8.50	273	9.0%	25	3
Outpatient mental health & substance abuse centers (62142)	$10.0	$8.50	1,507	2.3%	35	4
HMO medical centers (621491)	$10.0	$8.50	14	19.8%	3	0
Kidney dialysis centers (621492)	$50.0	$29.00	355	25.9%	92	10
Free-standing ambulatory surgical & emergency centers (621493)	$10.0	$8.50	1,235	9.5%	117	13
Other outpatient care centers (621498)	$10.0	$8.50	1,891	2.2%	42	5
Hospital outpatient services (622)	$50.0	$29.00	282	85.0%	240	240
Total			285,216		6,855	6,577

[1] Source: Table 4a in Ref. 12. May include small entities that do not dispense prescription drugs.
[2] Equals the percent of all establishments in the NAICS with receipts from code 8619 (i.e., prescription and nonprescription drugs). Source: Table 1a in Ref. 3.

Similar to the table on the number of for-profit small entities in the Health Care sector, table 8 of this document summarizes the estimated number of small not-for-profit firms. For this analysis, single-unit firms exempt from Federal income tax are treated as small. This definition of a small entity may overstate the number of small, government, hospital-based outpatient clinics since some single-unit hospitals are located in jurisdictions with populations larger than 50,000. Similar to other outlets in the Health Care sector, not-for-profit firms dispensing drugs are assumed to be equally distributed across all firm sizes. Therefore, based on the 1997 Economic Census data, about 2,085 small not-for-profit entities may dispense drugs (i.e., have revenues from RL code 8619). Applying the Table 1 proportions, the proposed rule is estimated to affect 1,834 of these small entities.

TABLE 8.—THE NUMBER OF AFFECTED SMALL NOT-FOR-PROFIT NONRETAIL ENTITIES

Description of Business and NAICS Code	No. of Small Entities[1]	Share of All Not-for-Profit Outlets With Revenues From R_x[2]	No. of Small Not-for-Profit Entities With Revenues From R_x	Estimated No. of Affected Small Not-for-Profit Entities
Family planning centers (62141)	454	39%	176	19
Outpatient mental health & substance abuse centers (62142)	698	1%	5	1
HMO medical center (621491)	2	31%	1	0
Kidney dialysis centers (621492)	9	8%	1	0
Freestanding ambulatory surgical & emergency centers (621493)	55	6%	3	0

TABLE 8.—THE NUMBER OF AFFECTED SMALL NOT-FOR-PROFIT NONRETAIL ENTITIES—Continued

Description of Business and NAICS Code	No. of Small Entities[1]	Share of All Not-for-Profit Outlets With Revenues From R_x[2]	No. of Small Not-for-Profit Entities With Revenues From R_x	Estimated No. of Affected Small Not-for-Profit Entities
Other outpatient care centers (621498)	984	10%	96	11
Hospital outpatient services (622)	2,033	89%	1,803	1,803
Total	4,235		2,085	1,834

[1] Source: Table 3b in Ref. 12. May include small single unit firms that do not dispense prescription drugs.
[2] Equals the percent of all establishments in the NAICS with revenues from code 8619 (i.e., prescription and nonprescription drugs). Source: Table 1b in Ref. 3.

Most pharmacies and authorized dispensers currently distribute information to patients using at least one of the five proposed compliance methods. These small entities would incur only negligible one-time costs to add the side effects statement and would not require any additional skills. The agency requests comment on these assumptions. Although pharmacies can choose the least-cost compliance method from among five options, about 11 percent of pharmacies that currently do not distribute consumer medication information to patients could incur new annual costs to comply with the proposed rule. These costs would be proportional to the number of prescriptions dispensed. Because all options involve tasks normally performed in a pharmacy, no additional skills would be required. FDA believes adding a preprinted sticker with the side effects statement would likely be the most costly means of compliance. The agency estimates that adding a preprinted sticker with the statement to a prescription container would cost up to $0.03 per prescription. NACDS reports that in 2001, retailer pharmacies received approximately $10.57 for the average prescription costing $50.17 (Ref. 1). Adding a sticker might reduce affected retail pharmacy revenues by 0.3 percent. FDA believes this would not result in a significant economic impact on a substantial number of small retail pharmacies.

b. *Drug manufacturers.* The proposed rule will also affect drug manufacturers of products with Medication Guides or OTC products approved under section 505 of the act. According to the SBA size standards, Pharmaceutical Preparation Manufacturing firms (NAICS 325412) with fewer than 750 employees are considered small. Since the Census Bureau uses different employment size categories than the SBA, the number of small entities is based on the percentage of establishments with less than 1,000 employees. According to this definition, 97 percent of all establishments operating in 1997 were small (Ref. 13). If a similar share of firms in this sector are small, 1999 data suggest there could be up to 730 small entities in this sector (Ref. 14).

Small manufacturers of drug products with FDA-approved Medication Guides may incur an average of $3,165 in one-time costs to revise labeling of each affected product. Table 9 of this document illustrates the possible impacts on these manufacturers. Depending on production volume, the annualized costs of the proposed rule will add between $0.005 and $0.45 per unit sold. Moreover, NACDS reports that manufacturers receive $37.93 of the average $50.17 cost of a prescription (Ref. 1). If this figure is representative for the small entities affected by the rule, the additional annualized cost might reduce average receipts by less than 1.25 percent. FDA requests comments on these estimates from affected small entities.

Manufacturers of affected OTC products may spend between $1,000 and $3,000 to change their labeling. The effect on individual firms will vary with the number of products the firm must modify. The agency cannot assess the economic impact of the proposed rule on the small OTC manufacturers because Census does not report sales data for OTC products sold through all markets. However, most small firms manufacture few affected stock keeping units and might not incur significant regulatory costs. The agency requests comment from affected small entities.

TABLE 9.—ESTIMATED COST FOR SMALL ENTITIES WITH THREE ALTERNATIVE LEVELS OF PRODUCTION

	No. of Units, With Medication Guides, Sold Annually		
	1,000	10,000	100,000
Annualized cost to revise labeling[1]	$450.58	$450.58	$450.58
Additional cost per unit sold	$0.45	$0.05	$0.005
Additional cost per unit sold as a percentage of average manufacturer's share of retail prescription cost[2]	1.19%	0.12%	0.01%

[1] $450.58 equals the $3,164.71 one-time cost, annualized at 7% for 10 years.
[2] Based on an average share of $37.93 (Ref. 1).

As a result of this analysis, FDA believes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

c. *Alternatives considered.*

Alternative implementation schedule

Because of the requirements of the BPCA, FDA considered a shorter implementation schedule, requiring compliance within 6 months of the effective date of the rule. However, the BPCA also mandates action that minimizes the cost on pharmacies and reaches the broadest consumer

audience. To address all of these requirements, the agency selected a 1-year implementation plan. This longer period will provide adequate time for all affected establishments to comply with the rule and specifically reduce the cost burden on small entities.

Require side effects statement for all drug labeling

The agency considered, but rejected, requiring that the side effects statement be added to the "physician labeling'' of all prescription drug products. The BPCA requires that the statement reach the broadest consumer audience possible. Physician labeling is targeted to health care practitioners and pharmacists. Although consumers may have access to this labeling, it is not intended for the consumer audience. Thus, adding the statement to physician labeling would cause firms of all sizes to incur costs that would not be necessary to achieve the goal of reaching a broad consumer audience.

Furthermore, the agency has proposed changes to physician labeling that will require drug manufacturers to include contact information, including the MedWatch telephone number, so that health care practitioners may report serious adverse drug reactions. These proposed changes will inform consumers who do access physician labeling how to report adverse events to FDA. If the proposed rule also required that firms add the side effects statement to physician labeling, many firms might be required to change labeling twice in a short period of time. This could be especially burdensome on small entities.

The one-time cost of this alternative would be approximately $15.6 million, including any excess inventory losses with a 1-year implementation schedule. However, allowing firms additional time to change labeling would reduce the costs of this alternative. For example, following a schedule staggered over 7 years after the effective date, similar to that proposed for the physician labeling rule, reduces the one-time cost of this alternative to $12.7 million with a present value of $8.0 million. Moreover, with a longer implementation schedule, some firms could avoid these compliance costs by adding the side effects statement when they revise drug product labeling for other reasons.

The agency also considered, but rejected, requiring the side effects statement to be included in PPIs. However, because not all prescription drug products carry PPIs, FDA determined that it was not the most effective way to reach a broad consumer audience, and would be duplicative of other methods the agency is proposing to distribute the side effects statement.

Alternative statement

FDA considered but rejected several alternatives for the proposed side effects statement. The agency considered a more comprehensive side effects statement to clarify when consumers should call FDA. The agency also considered requiring that the side effects statement be formatted in a larger type size than currently proposed for the sticker and vial cap options. The agency determined that these alternatives would require pharmacies to use larger, nonstandard stickers, thereby increasing compliance costs. The agency is proposing a more succinct side effects statement and smaller type size for the sticker and vial cap options in order to reduce the burden on small entities.

Options for pharmacies and authorized dispensers

FDA considered several options pharmacies and authorized dispensers could use to satisfy the requirements of the proposed rule. FDA has included all of these options in its proposal in order to minimize the effects of the rule on the pharmacy profession.

VI. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (Public Law 104–13) is not required. FDA is proposing to amend its regulations to require a labeling statement be added to certain categories of drug product labeling. The proposed labeling statement for prescription drugs products is, "Call your doctor for medical advice about side effects. You may report side effects to FDA at 1–800–FDA–1088.'' For OTC drug products approved under section 505 of the act, the agency is proposing to use the existing subheading in § 201.66(c)(5)(vii) that states, "Stop use and ask a doctor if,'' followed by the bulleted statement "side effects occur.'' The second sentence would remain the same as for prescription products: "You may report side effects to FDA at 1–800–FDA–1088.'' These labeling statements are not subject to review by OMB because they are "originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and are not considered a collection of information under the PRA.

VII. Environmental Impact

The agency has considered the environmental effects of this proposed rule and has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

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

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**). Two paper copies of any written comments are to be submitted, except that individuals submitting written comments or anyone submitting electronic copies may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

X. References

The following references have been placed on display in the Division of Dockets Management and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. "2001 Industry Facts-at-a-Glance,'' National Association of Chain Drug Stores, *http://www.nacds.org* (last viewed October 24, 2002).

2. "Summary 1997 Economic Census, Retail Trade,'' U.S. Department of Commerce, U.S. Census Bureau, Publication No. EC97R44S–SM, January 2001, pp. 55, 57, 69, 122, 151.

3. "Sources of Receipts or Revenue, 1997 Economic Census, Health Care and Social Assistance, Subject Series,'' U.S. Department of Commerce, U.S. Census Bureau, Publication No. EC97S62S–LS, August 2000, pp. 7–9, 11–13, 16, 24–27, 29.

4. Svarstad, B. et al., ''Evaluation of Written Prescription Information Provided in Community Pharmacies, 2001,'' Final report to FDA, December 21, 2001, presented at the FDA Drug Safety and Risk Management Advisory Committee Meeting, July 17, 2002, *http://www.fda.gov/cder/reports/prescriptionInfo/default.htm* (last viewed October 21, 2002).

5. 2000 National Occupational Employment and Wage Estimates,'' U.S. Department of Labor, Bureau of Labor Statistics, *http://www.bls.gov.oes/2000/oes292052.htm* (last viewed April 28, 2003).

6. Friedman, M. A. et al., ''The Safety of Newly Approved Medicines: Do Recent Market Removals Mean There Is a Problem?'' *Journal of American Medical Association*, 281(18):1728–34, 1999.

7. ''Adverse Drug Events: The Magnitude of Health Risks Is Uncertain Because of Limited Incidence Data,'' U.S. General Accounting Office, Report No. GAO/HEHS–0021, January 2000, p. 10.

8. Thomas, E. J. et al., ''Costs of Medical Injuries in Utah and Colorado,'' *Inquiry*, 36:255–64, 1999.

9. Ernst, F. R., and A. J. Grizzle, ''Drug-Related Morbidity and Mortality: Updating the Cost-of-Illness Model,'' *Journal of the American Pharmaceutical Association*, 41(2):192–199, 2001.

10. Viscusi, W. K., ''Individual Rationality, Hazard Warnings, and the Foundations of Tort Law,'' *Rutgers Law Review*, 48:625–671, 1996.

11. ''Establishment and Firm Size, 1997 Economic Census, Retail Trade,'' U.S. Department of Commerce, U.S. Census Bureau, Publication No. EC97R44S–SZ, October 2000, pp. 135, 139, 152, 160.

12. ''Establishment and Firm Size, 1997 Economic Census, Health Care and Social Assistance, Subject Series,'' U.S. Department of Commerce, U.S. Census Bureau, publication EC97S62S–SZ, October 2000, pp. 88–90, 97–103, and 106.

13. ''Pharmaceutical Preparation Manufacturing, 1997 Economic Census, Manufacturing, Industry Series,'' U.S. Department of Commerce, U.S. Census Bureau, Publication No. EC97M–3254B, November 1999, p. 9.

14. ''Statistics of U.S. Businesses: 1999, Pharmaceutical Preparation Manufacturing, United States,'' U.S. Department of Commerce, U.S. Census Bureau, *http://www.census.gov/epcd/susb/1999/us/US325412.htm* (last viewed September 12, 2002).

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 208

Labeling, Prescription drugs, Reporting and recordkeeping requirements.

21 CFR Part 209

Authorized dispensers, Drugs, Pharmacies, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 201 and 208 be amended and part 209 be added as follows:

PART 201—LABELING

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

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

2. Amend § 201.66 by adding two sentences at the end of paragraph (c)(5)(vii) to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

* * * * *

(c) * * *

(5) * * *

(vii) * * * For all OTC drug products under an approved drug application, the following text shall immediately follow the subheading: ''[Bullet] side effects occur. You may report side effects to FDA at 1–800–FDA–1088.'' The telephone number must appear in a minimum 6-point bold letter height or type size.

* * * * *

PART 208—MEDICATION GUIDES FOR PRESCRIPTION DRUG PRODUCTS

3. The authority citation for 21 CFR part 208 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360, 371, 374; 42 U.S.C. 262.

4. Amend § 208.20 by adding paragraph (b)(7)(iii) to read as follows:

§ 208.20 Content and format of a Medication Guide.

* * * * *

(b) * * *

(7) * * *

(iii) For drug products approved under section 505 of the act, the following verbatim statement: ''Call your doctor for medical advice about side effects. You may report side effects to FDA at 1–800–FDA–1088.''

* * * * *

5. Add part 209 to read as follows:

PART 209—REQUIREMENT FOR AUTHORIZED DISPENSERS AND PHARMACIES TO DISTRIBUTE A SIDE EFFECTS STATEMENT

Subpart A—General Provisions

Sec.

209.1 Scope and purpose.
209.2 Definitions.

Subpart B—Requirements

209.10 Content and format of the side effects statement.

209.11 Dispensing and distributing the side effects statement.

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 371; 42 U.S.C. 241.

Subpart A—General Provisions

§ 209.1 Scope and purpose.

(a) This part sets forth requirements for human prescription drug products approved under section 505 of the Federal Food, Drug, and Cosmetic Act and dispensed by authorized dispensers and pharmacies to consumers. This part requires distribution of a side effects statement and applies to new and refill prescriptions. This part is not intended to apply to authorized dispensers dispensing or administering prescription drug products to inpatients in a hospital or health care facility under an order of a licensed practitioner, or as part of supervised home health care.

(b) The purpose of providing the side effects statement is to enable consumers to report side effects of prescription drug products to FDA.

§ 209.2 Definitions.

For the purposes of this part, the following definitions apply:

Act means the Federal Food, Drug, and Cosmetic Act (sections 201–907 (21 U.S.C. 301–397)).

Authorized dispenser means an individual licensed, registered, or otherwise permitted by the jurisdiction in which the individual practices to provide drug products on prescription in the course of professional practice.

Consumer medication information means written information voluntarily provided to consumers by dispensing pharmacists as part of patient medication counseling activities.

Medication Guide means FDA-approved patient labeling conforming to the specifications set forth in part 208 of this chapter and other applicable regulations.

Pharmacy includes, but is not limited to, a retail, mail order, Internet, hospital, university, or clinic pharmacy, or a public health agency, regularly and lawfully engaged in dispensing prescription drugs.

Side effects statement means the following verbatim statement: ''Call your doctor for medical advice about side effects. You may report side effects to FDA at 1–800–FDA–1088.''

Subpart B—Requirements

§ 209.10 Content and format of the side effects statement.

(a) *Content.* The side effects statement provided with each prescription drug product approved under section 505 of the act must read: "Call your doctor for medical advice about side effects. You may report side effects to FDA at 1–800–FDA–1088.''

(b) *Format.* The side effects statement must be in a single, clear, easy-to-read type style. The letter height or type size used for the side effects statement in accordance with paragraphs (b)(1) and (b)(2) of § 209.11 must be no smaller than 6 points (1 point = 0.0138 inches). The letter height or type size for the side effects statement under paragraphs (b)(3), (b)(4), and (b)(5) of § 209.11 must be no smaller than 10 points.

§ 209.11 Dispensing and distributing the side effects statement.

(a) Each authorized dispenser or pharmacy must distribute the side effects statement with each prescription drug product approved under section 505 of the act and dispensed. The side effects statement must be distributed with new and refill prescriptions.

(b) An authorized dispenser or pharmacy must choose one or more of the following options to distribute the side effects statement:

(1) Distribute the side effects statement on a sticker attached to the unit package, vial, or container of the drug product;

(2) Distribute the side effects statement on a preprinted pharmacy prescription vial cap;

(3) Distribute the side effects statement on a separate sheet of paper;

(4) Distribute the side effects statement in consumer medication information; or

(5) Distribute the appropriate FDA-approved Medication Guide that contains the side effects statement.

Dated: December 30, 2004.

Mark B. McClellan,

Commissioner of Food and Drugs.

Dated: December 30, 2004.

Tommy G. Thompson,

Secretary of Health and Human Services.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

IMS Health collects data on the quantity of products purchased by retail and nonretail pharmacies. Data may be reported three ways, by "extended units'' (EUs), "eaches'' (EAs), and "units'' (UNs). IMS defines "extended units'' as the individual tablet or capsule for solid dosage forms and the weight or volume (i.e., grams or milliliters) for other dosage forms, "eaches'' as individual product packages (e.g., a vial, bottle or packet of pills), and "units'' as individual shipping packages. None of these definitions correlates directly to the number of prescriptions dispensed. However, comparing retail prescription volume to the number of products purchased by the sector provides a rough estimate of the average number of EUs, EAs or UNs per prescription. Applying these three averages to the number of drug products purchased by the nonretail pharmacy sector yields rough estimates of the number of prescriptions dispensed by these outlets. Although uncertain, the range of prescriptions derived by this method is used to estimate the impact of the proposed rule on the nonretail pharmacy sector. These estimates were derived by FDA using IMS data. Although they were reviewed by IMS, they do not necessarily represent IMS views. The agency requests comments from nonretail outlets on its derivation of prescription volume.

The number of prescriptions dispensed, and the number of UNs, EAs and EUs purchased for different types of retail pharmacies are shown in Table A–1 of this appendix. In addition, the average number of products purchased per prescription dispensed is calculated for each of the three definitions of purchased products.

TABLE A–1.—NUMBER OF PRESCRIPTION DRUGS DISPENSED, NUMBER OF PHARMACEUTICAL PRODUCTS PURCHASED, AND AVERAGE NUMBER OF PHARMACEUTICAL PRODUCTS PER PRESCRIPTION IN 2001 BY RETAIL CHANNEL

Retail Channel	No. of Prescriptions Dispensed (million)	No. of Products Purchased (million)			Average No. of Products Purchased per Prescription Dispensed[1]		
		UNs	EAs	EUs	UNs	EAs	EUs
Mail Order	163.51	275.47	459.75	24,451.36	1.68	2.81	149.54
Independents	778.68	519.59	860.84	67,534.84	0.67	1.11	86.73
Food Stores	426.52	755.80	1,031.86	156,898.89	1.77	2.42	367.86
Chain Stores[2]	1,715.60	2,159.40	3,089.18	265,991.78	1.26	1.80	155.04

Sources: IMS Health, National Prescription Audit *Plus*, Year 2001, data extracted June 2002; IMS Health, Retail Perspective, Year 2001, data extracted June 2002.

[1] Averages equal the number of UNs, EAs or EUs, divided by the number of prescriptions.

[2] Includes traditional chain stores and mass merchants.

Table A–2 of this appendix displays IMS data for the number of UNs, EAs and EUs shipped to each nonretail channel with outpatient services. Data for clinics and HMOs may include drugs administered to inpatients of these facilities. For this analysis, the agency conservatively assumes that clinics and HMOs dispense all their products to outpatients. Similar to clinics and HMOs, hospital data include pharmaceutical products purchased for both outpatient and inpatient use. Unlike the other health care facilities listed, hospitals administer most drugs to inpatients. Thus the data for hospitals are adjusted by the share of revenue from outpatient services reported in the 1997 Economic Census (Ref. 3).

Although most nonretail channels defined by IMS Health agree closely with NAICS codes, according to Census data, 9,720 offices of health care practitioners reported revenue from pharmaceutical products in 1997. Because the number of products purchased by these offices is minor compared to other nonretail channels, they are not reported separately in the IMS data and would be included with data on other miscellaneous outlets. Therefore, for this analysis, other miscellaneous outlets are considered equivalent to offices of health care practitioners.

TABLE A–2.—NUMBER OF PHARMACEUTICAL PRODUCTS PURCHASED BY NONRETAIL CHANNELS IN 2001[1]

Nonretail Channel	No. Purchased by Quantity Measure (million)		
	UNs	EAs	EUs
Miscellaneous other, excluding prisons and universities	9.86	16.26	1,422.93
Clinics, including universities	121.78	342.24	10,444.36
HMOs	26.79	44.87	2,764.78
Federal and non-Federal hospitals	446.09	2,112.93	81,395.52
Hospitals adjusted by share of revenue from outpatient services[2]	118.11	559.46	21,551.76

[1] Source: IMS Health, Provider Perspective, Year 2001, data extracted June 2002.
[2] The weighted average share of revenue from outpatient services for NAICS 622 equals 26.5% (Ref. 3).

Three weighted averages were calculated based on the retail sector data in Table A–1 of this appendix and vary from 1.20 UNs per prescription to 166.93 EU per prescription (see Table A–3 of this appendix). To derive an estimate of the number of prescriptions dispensed by nonretail channels, the weighted average number of products per prescription shown in Table A–3 of this appendix is applied to the nonretail sector purchase data. This yields estimates that range from approximately 217 million to 546 million prescriptions per year (Table A–4 of this appendix).

TABLE A–3.—PER PRESCRIPTION WEIGHTED AVERAGE BY QUANTITY TYPE AND RETAIL CHANNEL[1]

Retail Channel	Share of Dispensed Prescriptions	Weighted Average No. Per Prescription by Quantity Type		
		UNs	EAs	EUs
Mail Order	5%	0.09	0.15	7.93
Independents	25%	0.17	0.28	21.90
Food Stores	14%	0.25	0.33	50.87
Chain Stores[2]	56%	0.70	1.00	86.24
Total Weighted Average	100%	1.20	1.76	166.93

Sources: IMS Health, National Prescription Audit *Plus*, Year 2001, data extracted June 2002, IMS Health, Retail Perspective, Year 2001, data extracted June 2002.
[1] Each channel's weighted average equals the share of retail prescriptions for the channel, multiplied by the corresponding average in Table A–1. The total weighted average for UNs, EAs, or EUs is the sum of the individual channel's weighted average in the column. Totals may not sum or multiply due to rounding.
[2] Includes traditional chain stores and mass merchants.

TABLE A–4.—ESTIMATED NUMBER OF OUTPATIENT PRESCRIPTIONS DISPENSED BY NONRETAIL CHANNELS

Nonretail Channel by NAICS Code	Estimated No. of Outpatient Prescriptions Dispensed (millions)		
	Based on UNs[1]	Based on EAs[1]	Based on EUs[1]
NAICS 6211, 6212 and 6213: Offices of Health Care Practitioners[2]	8.2	9.2	8.5
NAICS 6214, except NAICS 621491: Outpatient Care Centers, except HMOs[3]	101.2	194.0	62.6
NAICS 621491: HMO Medical Centers[4]	22.3	25.4	16.6
NAICS 622: Hospital Outpatient Services[5]	98.2	317.1	129.1
Total	229.9	545.7	216.8

Sources: IMS Health, National Prescription Audit *Plus*, Year 2001, data extracted June 2002; IMS Health, Provider Perspective, Year 2001, data extracted June 2002; IMS Health, Retail Perspective, Year 2001, data extracted June 2002.
[1] Weighted average quantity/script from Table A–3: UNs/Prescription = 1.20, EAs/Prescription = 1.76, EUs/Prescription = 166.93.
[2] Corresponds to IMS data for miscellaneous-other, excluding prisons and universities.
[3] Corresponds to IMS data for clinics including miscellaneous-universities.
[4] Corresponds to IMS data for HMOs.
[5] Corresponds to IMS data for Federal and non-Federal hospitals adjusted for share of revenue from outpatient services.

[FR Doc. 04–9069 Filed 4–21–04; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AC00

Sawtooth National Recreation Area—Private Lands; Increasing Residential Outbuilding Size

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for comment.

SUMMARY: The Forest Service proposes to revise a building standard for residential outbuildings within the Sawtooth National Recreation Area in Idaho. This proposed rule would increase the allowable size for residential outbuildings to 850 square feet from the current 400-square-foot standard and would limit such outbuildings to one story not more than 22 feet in height. This revision would allow residents to construct two-car garages and increase indoor storage areas to protect personal property and equipment, thereby reducing the need for unprotected and unsightly outdoor storage. Public comment is invited and will be considered in the development of the final rule.

DATES: Comments must be received in writing by June 21, 2004.

ADDRESSES: Send written comments by mail to Sawtooth National Forest, Attn: Private Land Regulations, Kimberly Road East, Twin Falls, ID 83301; via e-mail to *mailroom_r4_sawtooth@fs.fed.us* with "Private Land Regulations'' in the subject line of the message; or via facsimile to (208) 737–3236. Comments also may be submitted via the World Wide Web/Internet at *http://www.regulations.gov*. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The agency cannot confirm receipt of comments. The public may inspect comments received on this proposed rule in the Office of Public Affairs at the Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, ID 83301. Visitors are encouraged to call ahead to (208) 737–3200 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jonathan Stephens, Recreation, Heritage, and Wilderness Resources Staff, Forest Service, USDA, (202) 205–1701; or Ed Waldapfel, Public Affairs Officer, Sawtooth National Forest (208) 737–3219.

SUPPLEMENTARY INFORMATION: The Sawtooth National Recreation Area (SNRA) in Idaho on the Sawtooth National Forest was created when Congress passed Public Law 92–400 in 1972 to assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildife values and the enhancement of recreational values. The act directed the Secretary of Agriculture to develop regulations setting standards for the use, subdivision, and development of privately owned property within the boundaries of the recreation area. The current regulations at title 36 of the Code of Federal Regulations, part 292, subpart C (36 CFR part 292, subpart C), were adopted in 1974 (39 FR 11544) and were amended in 1976 and 1989 (41 FR 29379, 54 FR 3368). The act recognizes that the Secretary may from time to time amend these regulations. The SNRA regulations at § 292.14(b) require that any amendment to the regulations shall include publication of a notice of a proposed rulemaking in the **Federal Register** to provide interested persons the opportunity to comment before adoption of a final rule.

The current SNRA regulations at § 292.16(e)(2)(ii) set out a residential building standard providing that each residence on private land within the SNRA may have not more than two outbuildings at an aggregate area not to exceed 400 square feet.

The Forest Service is proposing to increase this standard for the two allowable outbuildings to 850 square feet and to limit such outbuildings to one story not more than 22 feet in height. The agency previously received numerous comments from the public indicating that the current residential outbuilding size standard is inadequate and supporting the need to increase this size standard. These comments were received in response to the environmental assessment prepared in 2000 for proposed revision of the Sawtooth National Forest land and resource management plan.

This proposed increase in the standard for the maximum square footage of the two allowable residential outbuildings would allow the private landowners to construct two-car garages and increase indoor storage areas to protect personal property and equipment, thereby reducing the need for unprotected and unsightly outdoor storage. Public comment is invited and will be considered in the development of the final rule.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is not a significant rule. This proposed rule would not have an annual effect of $100 million or more on the economy, nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local Governments. This proposed rule would not interfere with an action taken or planned by another agency, nor raise new legal or policy issues. Finally, this proposed rule would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Proper Consideration of Small Entities

This proposed rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This proposed rule would impose minimal additional requirements on the affected public, which includes the owners of private property and residences within the Sawtooth National Recreational Area. The proposed increase of the allowable outbuilding size to 850 square feet is responsive to comments already received from the affected public stating that the current allowable square footage under the existing rule is inadequate. These comments were received in response to an environmental assessment prepared in 2000 for the proposed amendment of the Sawtooth National Forest land and resource management plan. The changes are necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish

Service-wide administrative procedures, program processes, or instructions'' that do not significantly affect the quality of the human environment. This proposed rule would allow for larger residential outbuildings on private lands within the Sawtooth National Recreation Area. The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. Furthermore, public comments indicating that the current 400-square-foot limit is inadequate were previously received in response to an environmental assessment prepared in 2000 for the proposed amendment of the Sawtooth National Forest land and resource management plan. A final determination will be made upon adoption of a final rule.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed rule does not pose the risk of a taking of Constitutionally protected private property.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and has concluded that the proposed rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination with Indian Tribal Governments

This proposed rule, which is applicable only to private lands within the Sawtooth National Recreation Area, does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with tribes is not required.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. After adoption of this rule as final, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this rule; and (3) the Department would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 292

Mineral resources, Recreation and recreation areas.

Therefore, for the reasons set forth in the preamble, the USDA, Forest Service, proposes to amend 36 CFR part 292, subpart C as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart C—Sawtooth National Recreation Area—Private Lands

1. The authority citation for subpart C continues to read as follows:

Authority: Sec. 4(a), Act of Aug. 22, 1972 (86 Stat. 613).

2. Amend § 292.16 by revising the second sentence in paragraph (e)(2)(ii) to read as follows:

§ 292.16 Standards.

* * * * *

(e) * * *

(2) * * *

(ii) * * * Aggregrate square foot area of outbuildings not to exceed 850 square feet and to be limited to one story not more than 22 feet in height.

* * * * *

Dated: April 8, 2004.

Sally Collins,

Associate Chief.

[FR Doc. 04–9102 Filed 4–21–04; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 126–0074a; FRL–7650–2]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). These revisions concern opacity standards related to particulate matter (PM–10) emissions from industrial processes. 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 must arrive by May 24, 2004.

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 copies of the submitted SIP revisions, EPA's technical

support document (TSD) and public comments at our Region IX office during normal business hours by appointment. 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.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

A copy of the rules may also be available via the Internet at *http://www.sosaz.com/public_services/Title_18/18-02.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.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are proposing to approve with the dates that they were revised and submitted by the ADEQ.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised	Submitted
ADEQ	R18–2–101 (paragraphs 41 and 111)	Definitions ["existing source" and "stationary source"]	09/26/90	01/16/04
ADEQ	R18–2–702	General Provisions [Visible Emissions]	08/08/03	01/16/04

On March 19, 2004, the submittal of Rule R18–2–101 (paragraphs 41 and 111) and Rule R18–2–702 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 Rule R18–2–101 (paragraphs 41 and 111) into the SIP on August 10, 1988 (53 FR 30220) as Rule R9–3–101. We approved a version of Rule R18–2–702 into the SIP on April 23, 1982 (47 FR 17485) as Rule R9–3–501.

On September 23, 2002 (67 FR 59456), we published a full disapproval of ADEQ Rule R18–2–702 as revised locally on November 13, 1993 and submitted on July 15, 1998. Offset sanctions would start on April 24, 2004 if the deficiencies were not corrected.

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

Particulate matter (PM–10) harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Rule R18–2–702 establishes general opacity requirements that help control PM–10 emissions.

The purpose for the Rule R9–3–101 (paragraph 41) revision relative to the SIP Rule R9–3–101 (paragraph 62) is as follows:

• To change the definition of "existing source" from those commencing construction or alteration before May 14, 1979 to those which do not have a New Source Performance Standard (NSPS) for PM–10. Rule R18–2–702 applies to "existing sources." This revised definition will ensure that all existing sources not otherwise subject to an opacity limit are covered by Rule R18–2–702. This includes many more sources in the applicability of the rule, so strengthens the SIP.

The purpose for the Rule R9–3–101 (paragraph 111) revision relative to the SIP Rule R9–3–101 (paragraph 158) is as follows:

• To clarify the definition of "stationary source" and, as a result, to clarify the sources covered by Rule R18–2–702. This revision will strengthen the SIP by removing potential ambiguity.

The purpose for the Rule R18–2–702 revisions relative to the SIP Rule R9–3–501 is to remedy deficiencies in the full disapproval of the version revised on November 18, 1993. See 67 FR 59456 (September 23, 2002). The deficiencies cited [in brackets] and the remedies are as follows:

• [The previous version of Rule R18–2–702 relaxed the SIP by changing the scope of the rule to apply to only "existing sources."] The revised rule cross-references the definition of "existing source" in Rule R9–3–101(41) which has been changed to "sources without an NSPS." This expands the scope of the rule to include more than 100 existing sources and exempts only those new sources already subject to NSPS opacity standards. Therefore, both new and existing sources are covered by an opacity standard, and there is no relaxation of the SIP in Rule R18–2–702.

• [The previous version of Rule R18–2–702 included a 40% opacity standard which EPA concluded does not meet the requirements of RACM/RACT.] The standard has been changed to 20% opacity for stationary sources in nonattainment and maintenance areas. This standard fulfills the requirements of RACM/RACT.

• [The previous version of Rule R18–2–702 included inappropriate discretion for the Director to relax the opacity standard if the source complies with the associated mass standard for the source.] Revised Rule R18–2–702.E requires that the ADEQ Director approving an alternate opacity standard submit the proposed alternate opacity standard to EPA for approval. This will assure that RACM/RACT and other SIP requirements are fulfilled for such revisions.

The TSD has more information about these rules.

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 RACM, including RACT, for significant source categories in moderate PM–10 nonattainment areas (*see* sections 172(c)(1) and 189(a)), and must not relax existing requirements (*see* sections 110(l) and 193). The area regulated by the rule contains five counties that are PM–10 moderate nonattainment areas: Cochise County, Santa Cruz County, Gila County, Mohave County, and Yuma County. Therefore, rules with emission standards for these nonattainment areas must meet the requirements of RACM/RACT.

Documents that we used to help evaluate enforceability and RACT

requirements consistently include the following:

• PM–10 Guideline Document (EPA–452/R–93–008).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACM/RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the CAA. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (2 U.S.C. 1501 *et seq.*).

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

List of Subjects in 40 CFR Part 52

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

Dated: April 5, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–9041 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 218–0433b; FRL–7640–8]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). The KCAPCD revisions concern stack sampling, standards for granting applications, and the emission of particulate matter (PM–10) from agricultural burning and prescribed burning. We are proposing to approve local rules that administer regulations and regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 24, 2004.

ADDRESSES: Mail or e-mail 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 documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs 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.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301.

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, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local KCAPCD Rules 108, 208, and 417. 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 these SIP revisions are 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: March 8, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–9039 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA 118–PLANb; FRL–7641–6]

Approval and Promulgation of Implementation Plans, Finding of Attainment, and Designation of Areas for Air Quality Planning Purposes; 1-Hour Ozone Standard, East Kern County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that East Kern County, California, has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is proposing to approve the East Kern County 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions to the East Kern County portion of the California State Implementation Plan (SIP). Finally, EPA is proposing to redesignate the East Kern County area to attainment for the 1-hour ozone NAAQS.

DATES: Any comments on this proposal must arrive by May 24, 2004.

ADDRESSES: Send comments to Dave Jesson (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *jesson.david@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814;

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301–2370.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957, or *jesson.david@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Clean Air Act (CAA) section 181(b)(2)(A), we are proposing to find that East Kern County, California, has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). We are proposing to approve the East Kern County 1-hour ozone maintenance plan as revisions to the East Kern County portion of the California State Implementation Plan (SIP), under CAA sections 175A and 110(k)(3), and we are proposing to approve the motor vehicle emissions budgets in the maintenance plan under CAA section 176(c)(2). Finally, we are proposing to redesignate the East Kern County area to attainment for the 1-hour ozone NAAQS under CAA section 107(d)(3)(E).

In the rules and regulations section of this **Federal Register**, we are making this finding, approving the maintenance plan and budgets, and redesignating the East Kern County area to attainment for the 1-hour ozone NAAQS in a direct final action without prior proposal because we believe that these actions are 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: March 19, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–9037 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 262

[RCRA–2003–0014; FRL–7651–9]

RIN 2050–ZA02

Hazardous Waste Generator Program Evaluation

AGENCY: Environmental Protection Agency.

ACTION: Advanced notice of proposed rulemaking .

SUMMARY: The Environmental Protection Agency (EPA) is seeking information from its stakeholders to evaluate the effectiveness of the Resource Conservation and Recovery Act's (RCRA's) hazardous waste generator regulatory program, as well as to identify areas for potential improvement. EPA, along with our State partners, will evaluate the information received in response to this notice to determine whether changes to the hazardous waste generator program are appropriate. If changes to the program are warranted, EPA will develop a strategy for implementing revisions to the hazardous waste generator program. The goals of this effort are to foster improved program effectiveness, a pollution prevention stewardship philosophy, and reduce compliance cost, where practicable. The Agency's efforts to develop revisions to the hazardous waste generator regulations would be predicated upon resource availability. The Agency also intends to hold meetings with the public to discuss this subject further, including the identification of priority concerns and potential solutions. A separate **Federal Register** notice will announce these meetings.

DATES: Comments must be submitted on or before July 21, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send your comments to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0014. Follow the detailed instructions as provided in Section I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For more information about this ANPRM, see the Web at: *www.epa.gov/epaoswer/hazwaste/gener/init/index.htm.* If you do not have access to the Web, contact the RCRA Call Center at 800 424–9346

or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

SUPPLEMENTARY INFORMATION:

I. General Information

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

EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0014. 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 OSWER 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 Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $0.15/page.

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 Docket. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

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.

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 docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search,'' and then key in Docket ID No. RCRA–2003–0014. 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.

Comments may be sent by electronic mail (e-mail) to: *rcra-docket@epa.gov,* attention Docket ID No. RCRA–2003–0014. 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 captured automatically 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.

You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Section I.A. 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 a copy of your comments to: OSWER Docket, Mailcode 5202T, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0014.

3. *By Hand Delivery or Courier.* Deliver your comments to: OSWER Docket, EPA Docket Center, U.S. EPA, 1301 Constitution Ave, NW., Washington, DC, Attention Docket ID No. RCRA–2003–0014. Such deliveries only are accepted during the Docket's normal hours of operation as identified in Section 1.A.

C. 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 following address: RCRA CBI Docket Officer, U.S. EPA, Mailcode 5305W, 1200 Pennsylvania Ave, NW., Washington, DC 20460 , Attention Docket ID No. RCRA–2003–0014. 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 you are claiming as 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.

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; *i.e.*, identify any suggested alternative requirements which could meet the rule objectives and result in either reduced regulatory burden, reduced compliance costs, or increased environmental protection.

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 also would be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Statutory Authority

EPA is requesting information under the authority of sections 2002, 3001–3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912 , 6921–6930, and 6974.

III. Background

In 1980, the Agency promulgated regulations applicable to generators of hazardous waste. These regulations were amended in 1986 to address small quantity generators and again in the late 1980's and early 1990's to address land disposal restrictions and air emission control requirements for generators, respectively. These regulations are found at 40 CFR 261.5 and 40 CFR part 262.[1] These regulations establish procedures and requirements for the management of hazardous waste on-site and off-site for both large and small quantity generators (LQGs and SQGs), as well as conditionally exempt small quantity generators (CESQGs).

The implementation of the generator regulations have played a major role in ensuring that hazardous waste has been properly managed. However, during the twenty years since their implementation, generators complying with the regulations, and States implementing the hazardous waste program, have developed a great deal of experience with this program. These experiences have been both positive and challenging. On the positive side, they include thousands of generators instituting programs that successfully prevent spills and accidents and ensure the safe management of hazardous waste. They also include EPA and the States developing effective training, compliance and technical assistance programs that support hazardous waste generators. These successes, however, have not come without challenges. Stakeholders tell us that they find the RCRA hazardous waste regulatory program to be very complex. Some generators believe the regulations are confusing. This may be particularly true for small businesses who often do not have the in-house capabilities or resources to devote to understanding and complying with the hazardous waste regulations. In other cases, EPA has heard that some hazardous waste generator regulations duplicate other federal regulations. Some stakeholders, conversely, are concerned that gaps may exist in the current regulations that could impede the safe management of hazardous waste.

[1] **Note:** Part 262 regulations lead the reader to other regulations found in parts 265, 266 and 268.

IV. Request for Information

With these concerns in mind, this notice is seeking information that will allow us to identify what is working effectively with the current regulatory program for hazardous waste generators, as well as to identify those aspects of the hazardous waste generator regulatory program that can be improved. The goals of improving our generator regulatory program are to foster improved program effectiveness, foster a pollution prevention stewardship philosophy, and reduce regulatory compliance costs, where practicable.

Using the comments received in response to this notice, and information collected in public meetings with stakeholders, EPA, working with our State partners, intends to determine whether changes to the hazardous waste generator program are appropriate. If so, we will then develop a program improvement strategy that focuses on those actions that could most efficiently and effectively improve the program. In developing the strategy, we will take into account the resources necessary and available for implementing the strategy.

Please note that this notice does not in any way change the existing Federal or State generator regulatory requirements. EPA is only seeking input on potential programmatic changes to improve the program. If any regulatory changes are proposed in the future, EPA will follow the full notice and comment process.

More specifically, EPA seeks input on the following questions that are organized by program theme. In responding, please identify the organization you represent (*e.g.,* company, trade association, public interest or citizen group, State implementing agency, etc.).

1. *Program effectiveness.* From your perspective, is the existing RCRA hazardous waste generator regulatory program meeting its goal of protecting human health and the environment? Have hazardous waste accidents been prevented as a result of the hazardous waste generator regulatory program? Has the generation and disposal of hazardous waste been minimized or eliminated? Has the management of hazardous waste become safer as a result of this program? Are the regulations easy to understand? Are

they logically organized? Is it clear what actions are needed to comply with the regulations? Please identify the specific regulations that are working effectively by regulatory citation and explain the reasons they are working. (**Note:** As stated earlier, we are focusing on those generator regulations in 40 CFR parts 261.5 and 262, and those management requirements in 40 CFR part 265 referenced in those generator regulations. We are not addressing issues associated with the definition of solid waste, hazardous waste identification regulations associated with listings and characteristics, or export provisions.)

2. *Program improvements.* From your perspective, what parts of the RCRA hazardous waste generator regulatory program can be improved and why? Please identify the specific regulations that are not working effectively by regulatory citation and explain the reasons they are not working. For example, is the regulation unclear? Are there multiple and/or inconsistent interpretations that cause uncertainty? Are you aware of any Agency interpretations that appear inconsistent with the regulatory wording? Is it clear what actions are needed to comply? Are there challenges or barriers that prevent you from complying effectively or efficiently with the regulations? Are there regulations that create unnecessary administrative burdens without providing additional increases in environmental protection? What impact does this problem have on your organization? Has your organization experienced any unintended adverse consequences as a result of complying with the regulations?

What would you recommend as solutions to the problems you identified for the current regulatory program? How would the program be improved by addressing these problems? What environmental or economic benefits would be achieved? For example:

—Would the regulation(s) be more efficient for purposes of compliance?
—Would implementation be easier?
—Would improved environmental protection result?
—Would greater compliance be achieved?
—What mechanism do you recommend for solving the problem you identified? Rule change? Policy or technical compliance guidance? New regulatory interpretations? Other (information dissemination, training, outreach, etc.)?

To help you answer these questions, some areas that have been identified by stakeholders in the past that could be improved are listed below:

—*Waste accumulation times* for both large and small quantity generators. Should there be different regulatory requirements for accumulating hazardous wastes other than the current specified time periods? If so, why?
—*Waste generation quantity thresholds* and counting rules for LQGs, SQGs, and CESQGs.
—*Episodic generator requirements; i.e.,* where the volume of hazardous waste generated in any given month fluctuates, for example due to equipment maintenance, such that a generator switches back and forth between generator categories from month to month. What requirements apply to episodic generators, such as submission of a Biennial Report, preparation of Contingency Plans, changes in training requirements, etc.?
—*Waste sampling and testing.* When is the use of grab sampling more appropriate than representative sampling? When is the use of analytical testing more appropriate than use of generator knowledge?
—*Waste management standards* for LQGs, SQGs and CESQGs. Are the regulations clear and effective?
—*Satellite accumulation.* What activities are allowed and what activities are prohibited within the specific regulatory provisions of 40 CFR 262.34 (c)? What requirements generators must comply with when moving wastes between a satellite accumulation area and a consolidation area?
—*Generator accumulation and treatment in containers or tanks.* What constitutes a "closed'' container? What tank standards apply to generators? What types of treatment are allowed and not allowed in containers or tanks; clarifying if treatment is allowed in satellite accumulation areas?
—*Closure standards for generator accumulation areas.* What requirements are generators responsible for under 40 CFR 265.111 and 265.114?
—*Co-generator requirements.* Who must comply with generator requirements when a hazardous waste is generated by a contractor working (*e.g.,* providing maintenance services) at the generator's facility.
—*RCRA identification numbers.* Should wastes from different locations be allowed to be consolidated into one reporting and/or identification number? To what extent should a RCRA ID number be tied to the site definition?
—*Waste minimization.* Are there more efficient and effective mechanisms other than the hazardous waste manifest for generators to certify that they have a waste minimization program in place? Are there options that would not violate the RCRA statute?
—*Land disposal restriction requirements applicable to generators.* Is applicability clear? What notification requirements apply? What are the different requirements for listed vs. characteristic wastes?

3. *Program redundancy.* Are there certain parts of the RCRA hazardous waste generator regulatory program that overlap, duplicate, or conflict with other federal rules? Please provide the specific regulatory citations to both the RCRA regulations and the other federal regulations and explain how they overlap. If possible, please provide copies of or citations to the other federal agency guidance, policy documents, or legal opinions you believe are of concern. How would you suggest that EPA resolve such conflicts?

4. *Program innovations.* Realizing that most of the hazardous waste generator regulatory program was promulgated over 20 years ago, are there new techniques or technologies that lend themselves to improving the existing regulatory framework in a more systematic and efficient manner? Are there new technologies that substantially reduce or eliminate hazardous waste generation? For instance, many generator facilities have adopted environmental management systems (EMSs) to assist them in complying with regulatory programs and as a method to improving the efficiency and effectiveness of their environmental management operations. How best can EPA facilitate the use of EMSs and other management techniques as vehicles to improve the hazardous waste generator program? Similarly, should EPA promote the research and development of innovative technologies to improve the management of hazardous waste? If so, in what areas? What would the potential benefits be to the protection of human health and the environment? What are the barriers towards implementing innovative processes that address hazardous waste generation?

5. *Performance Track Program.* The National Environmental Performance Track (NEPT) is a voluntary program that recognizes and rewards facilities for beyond-compliance environmental performance. For membership in NEPT, facilities must apply and meet several criteria. These include:

—Adopting and implementing an environmental management system (EMS),
—Having a record of sustained compliance with environmental requirements,
—Demonstrating environmental achievements and committing to continued improvement in particular environmental categories, and
—Engaging the public and quantitatively reporting on their environmental performance.

NEPT member facilities submit annual reports that summarize their progress in achieving their chosen commitments in specific environmental categories. This annual reporting, and additional activities undertaken by member facilities to engage the public, allows a high level of Agency scrutiny to continuously assess facility performance. In addition, facilities are accepted to Performance Track for a period of three years. To continue membership in the program after three years, facilities must renew their membership which includes developing additional, ongoing commitments to environmental performance improvements.

The Agency believes that because of the stringent qualification criteria and ongoing performance assessment, NEPT facilities should benefit from non-regulatory and regulatory flexibility not otherwise available to other generators of hazardous waste. Therefore, what RCRA generator requirements would be appropriate for NEPT facilities? Are there specific hazardous waste generator regulatory requirements that could be reduced, modified or eliminated for Performance Track member facilities?

6. *State programs.* Are there any specific State hazardous waste regulations, interpretations, or implementation programs that EPA should review and evaluate for improving and/or clarifying our generator regulations? If so, please provide copies of or citations to these regulations, interpretations and programs.

7. *Compliance assistance.* EPA wants to help generators understand and comply with the hazardous waste generator regulations. Similarly, EPA wants to provide the most effective support to States and others who provide compliance and technical assistance to hazardous waste generators. To this end, a great deal of compliance assistance information and links to additional resources are available at *www.epa.gov/compliance/assistance.*

EPA is interested in obtaining comment on where we can be most effective in this area. For example, have you sought assistance from EPA in the past? Did you receive the assistance you needed? If not, why not? What types of assistance (information, technical assistance, training, *etc.*) could EPA provide that would result in greater compliance? How can the assistance be provided cost-effectively? What, if any, barriers to compliance could be removed that would result in greater compliance?

8. *Measuring program performance and environmental results.* To measure performance of the hazardous waste generator program, EPA has in the past relied on indices such as the number of inspections and number of generators in compliance with the regulations. From your perspective, do other or better indices exist that more accurately measure program performance and environmental results? If so, what are they and what mechanisms, particularly existing mechanisms, could EPA use to collect these data? For example, would measuring the number of hazardous waste accidents occurring annually by facility and nationally be a good measure? By type of accident; *i.e.,* spill during transport (either within a facility or between facilities), release from a leaking container, fire, explosion? By type of waste?

9. *Burden reduction.* EPA is also seeking ways to reduce the record keeping and reporting burden on generators, while increasing our ability to measure environmental results more effectively. Over the last few years, EPA initiatives have identified several areas, such as the Biennial Reporting System and the Land Disposal Restrictions program, where record keeping and reporting requirements can be potentially reduced and still maintain our ability to measure environmental results. Are there other areas of the hazardous waste generator regulatory program where burden reduction can occur and still allow EPA to measure environmental results? Conversely, are there specific record keeping and reporting requirements that are redundant, confusing, or very time-consuming and costly that should be reviewed and evaluated? Please identify the specific regulations and reasons for seeking this review.

10. *Fostering pollution prevention and recycling.* EPA strongly believes that source reduction and recycling practices constituting legitimate/beneficial use of secondary materials result in both cost savings to industry and improved environmental benefits. How can EPA encourage generators to practice pollution prevention and recycling? Are there particular industrial sectors, waste streams, or chemicals on which we should focus our efforts? If so, why? What barriers prevent you from practicing pollution prevention and recycling? What types of assistance (research and development, information, technical assistance, training, incentives, etc.) could EPA provide that would result in your adopting pollution prevention practices or recycling as part of your operation?

Similarly, the Agency is seeking information from generators describing successful pollution prevention and recycling techniques, practices, or processes that could be shared with and transferred to other organizations. In particular, EPA would be interested in facilities identifying the following: industrial sector; a description of the pollution prevention or recycling process, technology, or practice implemented; the costs of implementation; cost savings derived; environmental benefits achieved, such as reduction in air or water releases, resources conserved or reused, and reduction or elimination of hazardous waste generated; and point of contact, if possible.

11. *Program Priorities.* Realizing that EPA will not be able to address all stakeholder concerns immediately, please identify the top three priority projects you would like to see EPA undertake in the near future. In identifying these priorities, please identify the environmental and/or economic benefits of undertaking these projects.

Finally, EPA intends to hold meetings with the public to obtain additional feedback on the above questions. Details about the location and dates of these meetings will be announced in a **Federal Register** notice in the very near future.

Dated: April 15, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–9141 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 through 1851

RIN 2700–AC87

Re-Issuance of NASA FAR Supplement Subchapter G

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: Comments should be submitted on or before June 21, 2004, to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AC87, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments can also be submitted by e-mail to: *Celeste.M.Dalton@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1645; e-mail: *Celeste.M.Dalton@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).'' FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.,* designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).'' Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register.** Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This proposed rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors. The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register.** NFS regulations that require public comment are issued as chapter 18 of title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this proposed rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR 1842 Through 1851

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1842 Through 1851 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1842 through 1851 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Amend Part 1842 by—

(a) Removing Subpart 1842.1, sections 1842.202, 1842.202–70, 184 2.270, Subparts 1842.3, 1842.5, 1842.7, 1842.8, 1842.12, 1842.13, 1842.14, and 1842.15;

1842.7201 [Amended]

(b) In section 1842.7201, removing and reserving paragraph (a) and removing paragraphs (b)(3) through (b)(5) and paragraph (c); and

(c) Removing Subpart 1842.73 and section 1842.7401.

PART 1843—CONTRACT ADMINISTRATION

Subpart 1843.70 [Removed]

3. Amend Part 1843 by removing Subpart 1843.70.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

4. Amend Part 1844 by removing sections 1844.201, 1844.201–1, 1844.202, 1844.202–1, and Subpart 1844.3.

PART 1845—GOVERNMENT PROPERTY

5. Amend Part 1845 by—

(a) Removing sections 1845.102, 1845.102–70, 1845.102–71, 1845.104, 1845.106;

(b) In section 1845.106–70(e), removing ''Office of the Headquarters Office of Management Systems and Facilities (Code JLG)'' and adding ''Division of the Headquarters Office of Infrastructure and Management (Code OJG)'' in its place;

(c) Removing section 1845.106–71, Subpart 1845.3, and sections 1845.402, 1845.403;

(d) In section 1845.405–70, removing paragraphs (b), (c), and (d);

(e) Removing sections 1845.406, and 1845.406–70;

(f) In section 1845.407, removing paragraph (a);

(g) Removing sections 1845.606, 1845.606–1;

(h) In section 1845.607–170, removing and reserving paragraphs (b) and (c);

(i) Removing sections 1845.608, 1845.608–1, 1845.608–6, and 1845.610–3;

(j) In section 1845.610–4, removing ''NPG 4300.1'' and adding ''NPR 4300.1, NASA Personal Property Disposal Procedures and Guidelines'' in its place;

(k) Removing sections 1845.613, 1845.615, and Subpart 1845.70;

(l) Removing and reserving sections 1845.7201, 1845.7202, 1845.7203, 1845.7204, 1845.7205, 1845.7206, 1845.7206–1, 1845.7206–2, 1845.7207, 1845.7208, 1845.7208–1, 1845.7208–2, 1845.7209–1, and 1845.7209–2;

(m) In section 1845.7210–1, removing and reserving paragraphs (a), (b), and (d); and

(n) Removing section 1845.7210–2.

PART 1846—QUALITY ASSURANCE

6. Amend Part 1846 by—

(a) Removing sections 1846.000, and 1846.401;

(b) In section 1846.670–1,

(i) Deleting ''assurance (CQA)'' at the end of paragraph (a); and

(ii) In the introductory text of paragraph (b), removing ''CQA'' and adding ''contract quality assurance (CQA)'' in its place;

(c) In the first sentence of the introductory text of section 1846.672–4, removing ''or'' and adding ''of'' in its place; and

(d) Removing Subpart 1846.7.

PART 1847—TRANSPORTATION

7. Amend Part 1847 by removing Subpart 1847.2, sections 1847.304, 1847.304–3, 1847.304–370, 1847.305–10, 1847.305–13, and Subpart 1847.5.

PART 1848—VALUE ENGINEERING

8. Remove and reserve Part 1848.

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.1—[Amended]

9. Amend Part 1849 by removing Subpart 1849.1.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

10. Amend Part 1850 by—

(a) Removing Subparts 1850.2 and 1850.3;

(b) In section 1850.403–1, redesignating paragraph (a) as paragraph (b) and adding a new paragraph (a); and

(c) Removing sections 1850.403–2 and 1850.470.

The new paragraph (a) to section 1850.403–1 reads as follows:

1850.403–1 Indemnification requests.

(a) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

* * * * *

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

11. Amend Part 1851 by removing section 1851.102, paragraph (c) of section 1851.102–70, and section 1851.202.

[FR Doc. 04–9013 Filed 4–21–04; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR PART 14

RIN 1018–AT59

Conferring Designated Port Status on Houston, Texas; Louisville, Kentucky; and Memphis, Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to make Houston, Texas; Louisville, Kentucky; and Memphis, Tennessee, designated ports under section 9(f) of the Endangered Species Act of 1973 (ESA). This action would allow the direct importation and exportation of wildlife and wildlife products through these growing international ports. We are proposing to amend the regulations in 50 CFR Part 14 to reflect this designation. We will hold public hearings to collect comments on this change. We also seek written comments from the public.

DATES: Submit comments on or before May 24, 2004. *See* the Supplementary Information section for information on the public hearing dates and the dates by which you must request approval to participate in these hearings.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to: Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement, 4401 North Fairfax Drive, MS 3000, Arlington, Virginia 22203. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Suite 3000, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m., Monday through Friday. For the locations of the public hearings and information on presenting oral or written comments, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Gregory Jackson, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement, at (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

The ESA requires that all fish and wildlife, with only limited exceptions, be imported and exported through designated ports. Designated ports facilitate U.S. efforts to monitor wildlife trade and enforce wildlife protection laws and regulations by funneling wildlife shipments through a limited number of locations. The Secretary of the Interior, with approval of the Secretary of the Treasury, designates ports for wildlife trade by regulation after holding a public hearing and collecting and considering public comments. The Service selects designated ports based upon numerous criteria, such as volume of wildlife shipments, geographic diversity, frequency of requests for designated port exception permits, and the proximity to existing ports of entry. The Service presently has 14 designated ports of entry for the importation and exportation of wildlife and wildlife products: Anchorage, Alaska; Atlanta, Georgia; Baltimore, Maryland; Boston, Massachusetts; Chicago, Illinois; Dallas/Fort Worth, Texas; Honolulu, Hawaii; Los Angeles, California; Miami, Florida; New Orleans, Louisiana; New York,

New York; Portland, Oregon; San Francisco, California; and Seattle, Washington. The Service maintains a staff of wildlife inspectors at each designated port to inspect and clear wildlife shipments.

Regulatory exceptions allow certain types of wildlife shipments to enter or leave the country through ports which are not designated. Under certain conditions, importers and exporters can obtain a permit from the Service, called a designated port exception permit, that allows their use of non-designated ports. The importer or exporter will be responsible for additional fees associated with the designated port exception permit ($25) and the inspection of their wildlife shipment at a non-designated port.

Need for Proposed Rulemaking

Existing and projected increases in air and express cargo, along with substantial growth in the number of airline passengers, international visitors, and hunters seeking clearance of wildlife imports and exports, justify the proposed designation of the ports of Houston, Louisville, and Memphis. The designation of these ports will improve service, while reducing costs, for international air and ocean cargo and mail carriers, small businesses, and the public, while maintaining effective monitoring and regulation of the U.S. wildlife trade.

In the Fiscal Year 2004 budget appropriation for the Service's Office of Law Enforcement, monies were appropriated by Congress in the amount of $700,000 each for the purpose of establishing the designated ports of Louisville and Memphis. The Service has not received an appropriation from Congress to designate the port of Houston. However, the designation of Houston has been under discussion for some time. At present, the Service has three wildlife inspectors on duty in Houston, which fulfills the staffing requirement that the Service has established for a designated port in funding and staffing models. Therefore, the designation of Houston would amount to changing the status of an existing Service port and would not require start-up costs as would be the case in Louisville and Memphis.

Houston is one of the fastest growing ports of entry in the nation in both international airfreight and shipping. The three airports comprising the Houston Airport System handled 42,016,609 passengers and 330,701 tons of cargo in 2002. International air cargo tonnage at George Bush Intercontinental increased by more than 62 percent in the past 10 years with a 10 percent per year increase in the past 5 years. Houston is the primary air cargo gateway to and from Mexico, and the Houston sea port handles 81 steamship lines with 6,414 vessel calls, hauling 175,000,000 tons of cargo between Houston and 200 countries worldwide in 2002. The Port of Houston ranks first in the United States in tonnage imported, and third in tonnage exported. Houston also has an extensive designated Foreign Trade Zone.

Service records indicate that a wide variety of wildlife and wildlife products are imported and exported through Houston under designated port exception permits. These wildlife and wildlife products include game trophies, reptile leather goods, scientific and museum specimens, live tropical fish, and curios. The number of designated port exception permits issued for the port of Houston suggests that demand for the use of this port is high. In addition, the number of import/export licenses issued to companies in the State of Texas has nearly doubled since 2001. Doubtless, many of these companies are doing business in or near the Houston area and would benefit from the designation of this port.

At present, the designated ports of entry for wildlife and wildlife products nearest to Houston are Dallas/Fort Worth, Texas (approximately 239 miles) and New Orleans, Louisiana (approximately 347 miles). In the 2003 Fiscal Year, 4,434 wildlife shipments were processed in Dallas/Forth Worth and 659 wildlife shipments were processed in New Orleans. We estimate that a significant fraction of this volume will be shipped directly to Houston for Service inspection and clearance upon its designation, resulting in considerable savings in shipping time and costs. Currently, importations or exportations of wildlife or wildlife products arriving in Houston without Service clearance must be either shipped in-bond, under U.S. Bureau of Customs and Border Protection (CBP) authority, to designated ports of entry for Service inspection and clearance, or must be accompanied by a designated port exception permit that authorizes Service inspection and clearance in Houston. Designated port exception permits for Houston are issued on a regular basis since the Service does have three wildlife inspectors on duty at that location. However, either alternative creates delays and increased costs to businesses.

In Louisville, the presence of the United Parcel Service (UPS) hub at the Louisville International Airport makes Louisville the 6th largest handler of air cargo in the world. In 2002, UPS at Louisville handled 3,360,155,981 lbs. of air cargo in 3.5 million shipments, including approximately 665,000 CBP import entries. In addition, the port of Louisville had 34,354 CBP entries for other importations and waterborne cargo at the Louisville Container Freight Port separate from the UPS facility.

At present, the designated ports of entry for wildlife and wildlife products nearest to Louisville are Chicago, Illinois (approximately 297 miles) and Atlanta, Georgia (approximately 421 miles). In the 2003 Fiscal Year, 5,434 wildlife shipments were processed in Chicago and 2,020 wildlife shipments were processed in Atlanta. In addition, 11,800 wildlife shipments were processed in Anchorage, which is the Pacific rim first port of landing for UPS. We estimate that a significant fraction of this volume will be shipped directly to Louisville for Service inspection and clearance upon its designation, resulting in considerable savings in shipping time and costs. Currently, importations or exportations of wildlife or wildlife products arriving in Louisville without Service clearance must be shipped in-bond, under CBP authority, to designated ports of entry for Service inspection and clearance, thereby creating delays and increased costs to businesses. Designated port exception permits for Louisville are issued on an extremely limited basis since the Service does not currently have staff at that location, and issuing these permits can only be done subject to the availability of Service staff from other ports to conduct inspections.

In Memphis, the presence of the Federal Express (FedEx) headquarters and Superhub makes Memphis International Airport the world's largest processor of international airfreight, handling 2.63 million metric tons in 2001, more than Los Angeles or Hong Kong. FedEx's global network spans over 210 countries, and 121,000 international shipments pass through the Memphis hub each day. More than 130 foreign-owned firms from 22 countries employing over 17,000 workers have relocated to Memphis in the past 20 years. In addition, Memphis is home to both rail and waterborne freight imports and exports, with a CBP port of entry for such cargo. In 2001, the International Port of Memphis handled 16,907,000 tons of cargo. Memphis is served by five Class 1 railroads, which operate approximately 220 freight trains daily through the city.

At present, the designated ports of entry for wildlife and wildlife products nearest to Memphis are New Orleans, Louisiana (approximately 402 miles), Dallas, Texas (approximately 452 miles),

and Atlanta, Georgia (approximately 463 miles). In the 2003 Fiscal Year, 659 wildlife shipments were processed in New Orleans, 4,434 wildlife shipments were processed in Dallas, and 2,020 wildlife shipments were processed in Atlanta. In addition, 11,800 wildlife shipments were processed in Anchorage, which is the Pacific rim first port of landing for FedEx. We estimate that a significant percentage of this volume will be shipped directly to Memphis for Service inspection and clearance upon its designation, resulting in considerable savings in shipping time and costs. Currently, importations or exportations of wildlife or wildlife products arriving in Memphis without Service clearance must be shipped in-bond, under CBP authority, to designated ports of entry for Service inspection and clearance, thereby creating delays and increased costs to businesses. Designated port exception permits for Memphis are issued on an extremely limited basis since the Service has only one special agent at that location whose responsibilities extend far beyond the port. While there are 18 CBP inspectors and 10 U.S. Department of Agriculture Inspectors in Memphis, the absence of Service inspectors increases the likelihood that illegal wildlife shipments are imported or exported through Memphis impacting both the United States' ability to fulfill treaty obligations under the Convention on International Trade in Endangered Species (CITES) and creating an avenue for the introduction of injurious or invasive species into the nation. Prior to September 11, 2001, CBP inspectors in Memphis initiated about 156 wildlife-related seizures per year, mostly consisting of reptile leather goods. The single Service agent stationed in Memphis is responsible for criminal investigations in all of West Tennessee and therefore has very little time to devote to import/export matters. However, by spending minimal time at the FedEx air facility, he routinely makes about 40 seizures of illegally imported wildlife or wildlife products annually. Designated port status for Memphis will expedite the processing of wildlife shipments, which is financially advantageous for Memphis' and the region's carriers, importers, and exporters, while interdicting the illegal international import and export trade in wildlife and wildlife products.

In summary, the Service proposes that the ports of Houston, Louisville, and Memphis receive designated port status. The justification for this proposal is based primarily on past and projected increases in the import and export of wildlife or wildlife products through these ports. If this proposed rule is finalized, the result will be to ease the financial and administrative burden on companies and individuals seeking to import or export wildlife or wildlife products through the ports of Houston, Louisville and Memphis. If this proposed rule is finalized, the list of designated ports will be alphabetized by city name.

Notice of Public Hearings

Section 9(f) of the ESA, 16 U.S.C. 1538(f)(1), requires that the public be given an opportunity to comment at a public hearing before the Secretary of the Interior confers designated port status on any port. Under the ESA, the Service has scheduled the following public hearings:

Houston, Texas: A public hearing will be held on June 10, 2004, at 6 p.m. The hearing will be held at the U.S. Fish and Wildlife Service conference room located at 16639 W. Hardy, Houston, Texas, 77060, telephone number (281) 876–1520. All interested persons wishing to present oral or written comments at this hearing should request approval in writing by May 24, 2004. The address for requesting approval is: Resident Agent in Charge, U.S. Fish and Wildlife Service, 16639 W. Hardy, Houston, Texas, 77060. If they desire, persons requesting approval may submit a written copy of their proposed oral comments.

Louisville, Kentucky: A public hearing will be held on July 8, 2004, at 3 p.m. The hearing will be held at: Louisville Bar Center, Seminar Room, 600 West Main Street, Louisville, Kentucky. Persons may enter this facility from both the Main Street and the 6th Street entrance. The Louisville Bar Association does not allow media coverage in their facility. All interested persons wishing to present oral or written comments at this hearing should request approval in writing by June 17, 2004. The address for requesting approval is: Resident Agent in Charge, U.S. Fish and Wildlife Service, 220 Great Circle Road, Suite 150, Nashville, Tennessee, 37228. If they desire, persons requesting approval may submit a written copy of their proposed oral comments.

*Memphis, Tennessee:*A public hearing will be held on July 1, 2004, at 6 p.m. The hearing will be held at: Memphis Regional Chamber, 22 North Front Street, Suite 200, Conference Room, Memphis, Tennessee. All interested persons wishing to present oral or written comments at this hearing should request approval in writing by June 10, 2004. The address for requesting approval is: Resident Agent in Charge, U.S. Fish and Wildlife Service, 220 Great Circle Road, Suite 150, Nashville, Tennessee, 37228. If they desire, persons requesting approval may submit a written copy of their proposed oral comments.

Public Comments Requested

We intend that any final action resulting from this proposed rule be as accurate and effective as possible. Therefore, we request comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. 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.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov.*

Required Determinations

Executive Order 12866 (Regulatory Planning and Review)

This proposed rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Under the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action.

a. This proposed rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

The purpose of this proposed rule is to confer designated port status on Houston, Louisville, and Memphis. Changing the status of these ports will have very little or no adverse effect on the economic sector, productivity, jobs or the environment, or other units of government. This proposed rule is intended to decrease the administrative and financial burden on wildlife importers and exporters by allowing them to use the ports of Houston, Louisville, and Memphis for all varieties of wildlife shipments. This proposed rule provides a significant benefit to those businesses that import or export wildlife or wildlife products by allowing the inspection of shipments in Houston, Louisville, and Memphis, and will result in a savings for the importer or exporter in both time and the expense of shipping to a designated port for Service inspection and clearance.

b. This proposed rule will not create inconsistencies with other agencies' actions.

The Service is the lead agency regulating wildlife trade through the declaration process, the issuance of permits to conduct activities affecting wildlife and their habitats, and carrying out the United States' obligations under CITES. Therefore, this proposed rule has no effect on other agencies' responsibilities and will not create inconsistencies with other agencies' actions.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

This proposed rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. This proposed rule will, however, affect user fees. User fees will be decreased or cancelled depending on whether the import or export of wildlife or wildlife products is for commercial purposes. For example, in establishing Houston as a designated port, which is currently staffed with three wildlife inspectors, commercial importers and exporters will save a minimum of $40 per shipment and noncommercial importers and exporters will save a minimum of $95 per shipment. In establishing Memphis and Louisville as designated ports, which are not currently staffed with wildlife inspectors, commercial importers and exporters will save all costs associated with inspections and clearance, such as travel, salary, and per diem, and noncommercial importers and exporters will save the $55 administrative fee plus all costs associated with inspections and clearance. In addition, establishing Houston, Louisville, and Memphis as designated ports will also save all importers and exporters the $25 designated port exception permit fee.

d. This proposed rule will not raise novel legal or policy issues.

This proposed rule will not raise novel legal or policy issues because it is based upon specific language in the ESA and the Code of Federal Regulations which has been applied numerous times to various ports around the country.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Department of the Interior has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Most of the businesses that engage in commerce by importing or exporting wildlife or wildlife products would be considered small businesses as defined under the Regulatory Flexibility Act. This proposed rule is intended to ease the financial and administrative burden on companies and individuals seeking to import or export wildlife or wildlife products through the ports of Houston, Louisville, and Memphis. This burden will be eased through the reduction or elimination of user fees, and the elimination of the need for designated port exception permits. In addition, the designation of these ports will provide small entities with opportunities for additional brokerage, freight forwarding, and related services to accommodate the increased volume of imports and exports of wildlife and wildlife products through these ports.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)

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

a. This proposed rule does not have an annual effect on the economy of $100 million or more.

This proposed rule will not increase costs for small entities. The ports of Houston, Louisville, and Memphis cannot currently clear imports when the shipper requests Service clearance at those ports but, these shipments must continue under CBP bond to a designated port. Upon the designation of Houston, Louisville and Memphis, the elimination of costs associated with shipping under CBP bond to a designated port should amount to a substantial savings for importers and exporters of wildlife or wildlife products. In addition, the designation of these ports will provide small entities with opportunities for additional brokerage, freight forwarding, and related services to accommodate the increased volume of imports and exports of wildlife and wildlife products through these ports.

b. This proposed rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

This proposed rule is intended to ease the financial and administrative burden on companies and individuals seeking to import or export wildlife or wildlife products through the ports of Houston, Louisville, and Memphis, thereby decreasing costs or prices for consumers or individual businesses.

c. This proposed rule does not have significant negative effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies.

This proposed rule is intended to ease the financial and administrative burden on companies and individuals seeking to import or export wildlife or wildlife products through the ports of Houston, Louisville, and Memphis, thereby promoting competition, employment, and investment, and increasing the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule, as proposed, will not "significantly or uniquely'' affect small governments.

a. This proposed rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

We are the lead agency for carrying out regulations that govern and monitor the importation and exportation of wildlife and wildlife products.

Therefore this proposed rule has no effect on small government's responsibilities.

b. This proposed rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of $100 million or greater in any year, so it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Executive Order 12630 (Takings)

Under Executive Order 12630, this proposed rule does not have significant takings implications. Under Executive Order 12630, this proposed rule does not affect any constitutionally protected property rights. This proposed rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required. The purpose of this proposed rule is to confer designated port status on the ports of Houston, Louisville, and Memphis. The result will be easing the financial and administrative burden on the public by eliminating the need for non-designated port permits, and decreasing or eliminating the administrative fees associated with shipment inspections. Therefore, this proposed rule does not have significant takings implications.

Executive Order 13132 (Federalism)

Under Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism evaluation is not required. This proposed rule will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988 (Civil Justice Reform)

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this proposed rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

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

National Environmental Policy Act

This proposed rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM 2.2 (g) and 6.3 (D). This proposed rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This proposed rule is categorically excluded from further National Environmental Policy Act requirements, under part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. Individual tribal members are subject to the same regulatory requirements as other individuals who engage in the import and export of wildlife or wildlife products.

Executive Order 13211 (Energy Supply, Distribution, or Use)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The purpose of this proposed rule is to confer designated port status on the ports of Houston, Louisville, and Memphis. This proposed rule is not a significant regulatory action under Executive Order 12866 and it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Endangered Species Act

A determination has been made under Section 7 of the ESA that the proposed revision of Part 14 will not affect federally listed species.

Author

The originator of this proposed rule is Mark Phillips, Office of Law Enforcement, U.S. Fish and Wildlife Service, Washington, D.C.

List of Subjects in 50 CFR Part 14

Animal Welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described above, we propose to amend part 14, subchapter B of Chapter 1, title 50 of the Code of Federal Regulations as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 continues to read as follows:

Authority: 16 U.S.C. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

2. Revise § 14.12 to read as follows:

§ 14.12 Designated ports.

The following ports of entry are designated for the importation and exportation of wildlife and wildlife products and are referred to hereafter as ''designated ports:''

(a) Anchorage, Alaska.
(b) Atlanta, Georgia.
(c) Baltimore, Maryland.
(d) Boston, Massachusetts.
(e) Chicago, Illinois.
(f) Dallas/Fort Worth, Texas.
(g) Honolulu, Hawaii.
(h) Houston, Texas.
(i) Los Angeles, California.
(j) Louisville, Kentucky.
(k) Memphis, Tennessee.
(l) Miami, Florida.
(m) New Orleans, Louisiana.
(n) New York , New York.
(o) Portland, Oregon.
(p) San Francisco, California.
(q) Seattle, Washington.

Dated: April 12, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–9181 Filed 4–21–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 78
Thursday, April 22, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–04–337]

Request for New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS's) intention to request approval for the "Qualified Through Verification'' Program (QTV) information collection.

DATES: Comments may be submitted on or before June 21, 2004.

ADDRESSES: Submit comments to: Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue SW., Washington, DC 20250–0247; fax (202) 690–1527.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Terry B. Bane at the same address and fax number above, or e-mail *terry.bane@usda.gov*.

SUPPLEMENTARY INFORMATION: QTV is a voluntary HACCP-based program serving only the fresh-cut fruit and vegetable processing industry. The regulations in 7 CFR Part 52 provide for voluntary facility assessment programs that are paid for entirely by the user (user-fee) to verify their ability to produce wholesome food. QTV does not relieve participants from enforcement by the FDA or from under other applicable programs.

USDA published in the **Federal Register** on September 4, 1998 (63 FR 47220) a notice regarding the QTV program and asked for public comment. The comment period closed November 3, 1998. AMS received 28 comments from a wide range of sources, including trade associations, academia, members of Congress, state and local government agencies, and manufacturers.

Comments received addressed both implementation of the program as well as technical details of the program's operation. The majority of the recommendations raised by the comments were incorporated into the program.

Title: "Qualified Through Verification'' Program (QTV).

OMB Number: 0581–XXXX.

Expiration Date of Approval: 3 years from the date of OMB approval.

Type of Request: New collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621– *et seq.*) (AMA) directs and authorizes the Department of Agriculture (USDA) to develop standards of quality, grades, grading programs, and voluntary services under the regulations, *e.g.,* contract and specification acceptance services, facility assessment services and certifications of quantity and quality.

To provide programs and services, section 203(h) of the AMA directs and authorizes the Secretary of Agriculture to provide contract and specification acceptance services, facility assessment and other services under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service.

The QTV program is a voluntary program. Respondents need to request the service in writing, providing their processing information. In accordance with the AMA, the Agency will examine and verify the provided information and based on the information collected, assess and collect a fee from the respondent for the cost of the service. The information is collected to carry out the intent of the AMA, and is used only to provide the respondents the service they have requested, and to administer the program. This information is used only by authorized representatives of the USDA (AMS, Fruit and Vegetable Programs' national staff; regional directors and their staffs; Area Officers-in Charge and their staffs; and resident Federal graders).

The participant's use of appropriate automated, electronic or mechanical information collection methods is based on established industry standards and the sophistication of the processor's systems.

Affected public may include any partnership, association, business trust, corporation, organized group, and State, County or Municipal government, and any authorized agent that has a financial interest in the commodity involved.

Following the QTV program procedures, the respondent must provide processing information in writing to request service.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.68 hours per response.

Respondents: Applicants who are applying to participate in the Qualified Through Verification (QTV) Program.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 469.

Estimated Total Annual Burden on Respondents: 6,372.

Comments are invited on: (1) 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) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Mr. Terry B. Bane, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Ave. SW., Washington, DC 20250–0247; faxed to (202) 690–1087; or e-mailed to *terry.bane@usda.gov.*

All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 7 U.S.C. 1621–1627.

Dated: April 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–9158 Filed 4–21–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–306]

United States Standards for Grades of Watermelons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising an official grade standard, is soliciting comments on a petition to revise the United States Standards for Grades of Watermelons. AMS has received a petition from the National Watermelon Association (NWA) requesting a definition for seedless watermelons be added to the standard. Additionally, the petition included a request to add a variance to the size requirements.

DATES: Comments must be received by June 21, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov* or you may also send your comments by the electronic process available at Federal eRulemaking portal at *http://www.regulations.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

AMS received a petition from the NWA requesting a revision to the United States Standards for Grades of Watermelons. These standards were last revised in 1978. The petitioner is requesting that USDA add the following definition: "Seedless Watermelons'' are watermelons which have 16 or less mature seeds, not to include pips/caplets, on the face of the melon which has been cut into four equal sections (one lengthwise cut and one crosswise cut). Additionally, the petitioner is requesting the size requirements be revised. Currently the size requirements states, "When the size of the watermelon is stated in terms of average weight, unless otherwise specified, the melons in any lot averaging less than 30 pounds (13.6 kgs.) shall not vary more than 3 pounds (1.4 kgs.) below the stated average, and the melons in any lot averaging 30 pounds (13.6 kgs.) or more shall not vary more than 5 pounds (2.3 kgs.) below the stated average.'' The petitioner is requesting the size requirement be revised to allow for watermelons to vary 3 pounds above or below the average. Therefore, the size requirement would state, "When the size of the watermelons is stated in terms of average weight, unless otherwise specified, the melons in any lot averaging less than 30 pounds (13.6 kgs.) shall not vary more than 3 pounds (1.4 kgs.) above or below the stated average, and the melons in any lot averaging 30 pounds (13.6 kgs.) or more shall not vary more than 5 pounds (2.3 kgs.) below the stated average.''

Agricultural Marketing Service

Prior to undertaking detailed work to develop a proposed revision to the standard, AMS is soliciting comments on the petition submitted to revise the United States Standards for Grades of Watermelons.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standard. Should AMS conclude that there is an interest in the proposal, the Agency will develop a proposed revised standard that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR Part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: April 19, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–9159 Filed 4–21–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Volunteer Application for Natural Resource Agencies

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension without revision of the information collection, Volunteer Application for Natural Resource Agencies, OF–301. The collected information will help the Forest Service and other Natural Resource Agencies match the skills of individuals, who are applying for volunteer positions, with work that can be accomplished by volunteers. Information will be collected from potential volunteers of all ages. Those under the age of 18 years must have written consent from their parents or guardian.

DATES: Comments must be received in writing on or before June 21, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: All comments concerning this notice should be addressed to USDA Forest Service, Director, Senior, Youth & Volunteer Programs, (Mail Stop 1136), 1400 Independence Avenue, SW., Washington, DC 20250–0003. Comment may also be submitted via facsimile to (703) 605–5115. The public may inspect comments received at USDA-Forest Service, 1621 N. Kent Street, Roslyn Plaza East, Room 1010, Arlington, VA during normal business hours. Visitors are encouraged to call ahead to (703) 605–4851 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Donald T. Hansen, Program Manager, Volunteer Programs, Senior Youth and Volunteer Programs, at (703) 605–4851.

SUPPLEMENTARY INFORMATION:

Title: Volunteer Application for Natural Resource Agencies.

OMB Number: 0596–0080.

Expiration Date of Approval: 04/30/2004.

Type of Request: Extension with no revisions.

Abstract: This information collection helps agency volunteer coordinators and other personnel to match the volunteer worker with agency volunteer opportunities upon evaluation of the applicant's skills and physical condition

as described in the completed form OF–301. The Volunteer Act of 1972, as amended, authorizes the Natural Resource Agencies to recruit and train volunteer workers to accomplish certain work, such as building and maintaining trails, constructing campground facilities, improving wildlife habitat, assisting with interpretive services, assisting visitors, or other activities to help the agency meet its mission. Volunteers may be any age, as long as they are capable of doing the work for which they volunteer.

Persons interested in volunteering will have to write or call the agencies to request a copy of the Volunteer Application for Natural Resource Agencies or access to the appropriate agency internet to complete an on-line form. OF–301 asks potential volunteers for name, address, telephone number, age, the work categories in which they are interested, and about past work experiences. It also asks potential volunteers to specify the kind of work they prefer, to provide the dates they are available to do volunteer work and the location, to describe any physical limitations, and whether they require lodging at the location of volunteer work. Under this consolidated information collection agency effort, all other volunteer application forms will become obsolete once the OF–301 has been revised. If the information is not collected, the Federal Natural Resource Agencies would not be able to recruit any volunteers to accomplish their mission.

OF–301, Volunteer Application for Natural Resource Agencies

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 58,100.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 14,525.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. In submitting this proposal to the Office of Management and Budget for approval, the Forest Service will summarize and respond to comments received.

Dated: April 16, 2004.

Irving W. Thomas,

Acting Deputy Chief for Business Operations.

[FR Doc. 04–9124 Filed 4–21–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Southeast Alaska Federal Subsistence Regional Advisory Council Meeting

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

DATES: June 1, 2004.

Time and Location: 10 a.m. by teleconference. See **SUPPLEMENTARY INFORMATION** below.

SUMMARY: This notice informs the public that the Southeast Alaska Federal Subsistence Regional Advisory Council will hold a public meeting on June 1, 2004. The public is invited to participate and to provide oral testimony.

SUPPLEMENTARY INFORMATION: Regional Council discussion during the meeting will be devoted to the review and recommendation of a proposed rule on membership representation on regional councils, Stikine River fisheries issues, deer management planning for Unit 2, and other matters affecting subsistence users in Southeast Alaska. To participate, call, toll free, 1–888–398–1687. The Teleconference Leader is *Mr. Bob Schroeder* and the Passcode is *Regional Council.*

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Office of Subsistence Management, U.S. Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, Alaska 99503; telephone (907) 786–3888. For questions related to subsistence management issues on National Forest Service lands inquires may also be directed to Steve Kessler, Subsistence Program Leader, 3601 C Street, Suite 1030, Anchorage, Alaska 99503; telephone (907) 786–3592.

Dated: April 9, 2004.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 04–9117 Filed 4–21–04; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the Montana State Advisory Committee will convene at 1 p.m. (m.d.t.) and adjourn at 3:30 p.m. (m.d.t.), Wednesday, May 19, 2004. The purpose of the meeting with briefing is to plan for future activities including the consideration of a regional project on discrimination against Native Americans in reservation border towns and receive information on law enforcement issues in the state.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington DC, April 16, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–9130 Filed 4–21–04; 8:45 am]

BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Nevada State Advisory Committee in

the Western Region will convene at 10 a.m. (p.d.t.) and adjourn at 11:30 a.m., Friday, May 7, 2004. The purpose of the conference call is to discuss the status of the civil rights project being considered by the State Advisory Committee.

This conference call is available to the public through the following call-in number: 1–800–659–8294, access code number 23186014. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, May 6, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 16, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–9128 Filed 4–21–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the North Dakota State Advisory Committee will convene at 1 p.m. (MDT) and adjourn at 3:30 p.m. (MDT), Tuesday, May 25, 2004. The purpose of the meeting with briefing is to consider a regional project on discrimination against Native Americans in reservation border towns. The Committee will also be briefed on civil rights issues in the state.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 16, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–9154 Filed 4–21–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Subcommittees of Each Advisory Committee in the Western Region

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the subcommittees of each Advisory Committee in the Western Region (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas and Washington) will convene at 1 p.m. (p.d.t.) and adjourn at 2:30 p.m., Friday, May 14, 2004. The purpose of the conference call is to discuss regional civil rights issues and update information. This conference call is available to the public through the following call-in number: 1–800–659–8292, access code number 23186094. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, May l3, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC April 16, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–9129 Filed 4–21–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on May 18, 2004, 9:30 a.m., at the Herbert C. Hoover Building, Room 3407, 14th Street between Pennsylvania & Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks and introductions.

2. Review of Wassenaar Arrangement and Technical Working Group issues.

3. Review of Missile Technology Control Regime issues.

4. Update on Export Administration Regulations.

5. Update on status of U.S. Munitions List.

6. Update on status of current TransTAC proposals.

7. Discussion of Commerce Control List entries needing review for revalidation or change proposals.

8. Presentation of papers, proposals and comments by the public.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to Lee Ann Carpenter at *Lcarpent@bis.doc.gov.* For more information, please call Ms. Carpenter on (202) 482–2583.

Dated: April 19, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–9126 Filed 4–21–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 040419121–4121–01]

Request for Public Comment on the Receipt by the Department of Commerce of a Written Petition Requesting the Imposition of Short Supply Export Controls and Monitoring on Recyclable Metallic Materials Containing Copper

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on a petition requesting the imposition of short supply export controls.

SUMMARY: On April 7, 2004, the Bureau of Industry and Security (BIS) received a written petition requesting the imposition of export monitoring and export controls on copper scrap and copper-alloy scrap; the petitioner also requested a public hearing on the issue. This notice describes the Department's intended proceeding on the petition, and invites public comment on the subject of the petition.

DATES: In order to ensure ample time for the consideration of the views of interested persons, the Department requests submission of initial written comments by May 13, 2004. Written comments that respond to the initial comments should be submitted by May 27, 2004. All written comments must be received by no later than 5 p.m. e.d.t. June 7, 2004.

ADDRESSES: Written comments (three copies) should be sent to Copper Short Supply Petition, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Alternatively, comments may be e-mailed to *coppershortsupplypetition@bis.doc.gov.* All public comments on the subject of this proceeding, including the petition, will be made a matter of public record and will be available for review on the BIS Web site at *www.bis.doc.gov.* If requesters cannot access the BIS Web site, please call the Regulatory Policy Division at (202) 482–2440 for assistance.

FOR FURTHER INFORMATION CONTACT: Daniel O. Hill, Director of the Office of Strategic Industries and Economic Security, Bureau of Industry and Security, who may be reached at (202) 482–4506.

SUPPLEMENTARY INFORMATION: Under the provisions of section 7(c) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2406(c)), as implemented by section 754.7 of the Export Administration Regulations (EAR) (15 CFR 754.7), any entity, including a trade association, firm, or certified or recognized union or group of workers that is representative of an industry, or a substantial segment of an industry, that processes metallic materials capable of being recycled may file a petition with BIS requesting that the Department of Commerce impose monitoring on the export of such material, controls on the export of such material, or both, in order to carry out the policy set forth in section 3(2)(C) of the EAA.

On April 7, 2004, a petition was received from the member companies of the Copper & Brass Fabricators Council, Inc., and the Non-Ferrous Founders' Society requesting that the Department impose monitoring and controls on exports of recycled metallic materials containing copper pursuant to the provisions of section 7(c) of the EAA and section 754.7 of the EAR. The petitioner also requested that the Department hold a hearing on the subject of the petition.

In this notice, BIS is seeking comments on the justification for and merits of the actions requested in the petition, and the impact of such actions on affected exporters, the recyclable metallic metals industry, the recyclable copper industry, the economy, and the public at large. The commodities to be considered by the Department in this proceeding, identified by Schedule B number in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States, are listed under subheadings 7404.00.0020, 7404.00.0045, 7404.00.0062, and 7404.00.0080.

Public Comments

To assist the Department in its evaluation of this petition, interested persons are encouraged to submit written comments and data regarding the criteria set forth in section 7(c)(3)(A)(i)–(v) of the EAA; the need for and consequences of export monitoring or controls at this time on one or more of the commodities under consideration; and any other matters that interested persons believe to be relevant to the subject of this proceeding. All written comments should contain an executive summary of no more than five (5) pages.

In order to take into account the views of all interested persons in making its determination, the Department encourages parties to submit their comments at the earliest possible date. Early submission will ensure that persons are able to address the areas identified by the Department as well as comment, expand upon, and, if applicable, rebut the comments submitted by other persons. To fulfill this objective, the Department will accept initial comments and comments that respond to previously submitted comments. The Department requests that initial comments be submitted by May 13, 2004. Written comments that respond to the initial comments should be submitted by May 27, 2004. The period for submission of written comments on the action under consideration will end as of 5 p.m. e.d.t. June 7, 2004.

Public Hearing

The Department has received a request for a hearing pursuant to the provisions of section 7(c)(2) of the EAA. Persons desiring to make presentations at the public hearing must make a written request to BIS at the address listed above. Requests must be filed by May 13, 2004. The request should contain a telephone number where the presenter can be reached before the hearing. All requests to make an oral presentation should describe the presenter's interest in the proceeding, explain why that person is an appropriate representative of a group or class of persons that has such an interest, and should enclose a concise summary of the proposed oral presentation. The Department will notify each person selected to be heard prior to the hearing. Persons selected to be heard should bring 25 copies of their statement to the hearing.

The Department will attempt to ensure that all interested parties have an opportunity to be heard at the public hearing. The Department reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited. Only members of the Department's hearing panel may ask questions of the presenters.

The Department will provide more details on the procedures governing the conduct of the hearing in a notice to be published in the **Federal Register**.

Areas of Interest

Pursuant to the provisions of section 7(c) of the EAA, in making the determination as to whether to impose

monitoring or controls on the exports of recyclable metallic materials, the Department is required to determine whether:

1. There has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand.

2. There has been a significant increase in domestic price of such material or a domestic shortage of such material relative to demand.

3. Exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand.

4. A domestic price increase or shortage relative to demand has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry.

5. Export monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of the EAA. Section 3(2)(C) of the EAA states that it is the policy of the United States to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

To assist the Department in making these determinations, the Department is interested in any information that can be provided on the following subjects:

1. Information describing the current economic profile of the U.S. copper industry, including information on the number of producers, smelters, refiners, users, and exporters of copper scrap, and the number of employed workers engaged in these activities by industry and occupation.

2. Quantitative information characterizing the effect of copper scrap exports on industries that mine copper; smelt and refine copper; companies that roll, draw, and extrude copper; companies that produce copper wire; and the secondary smelting, refining, and copper alloying industry.

3. Data on the materials used in the manufacturing process for copper products; the percentage, by measure and price, of these materials, including the energy used, in manufactured copper products.

4. Data on the impact of exports on the domestic price of products containing copper, including an assessment of the direct economic impact of exports on user industries, such as construction, electronics, and transportation.

5. Quantitative information on the global copper industry, including the current and anticipated world supply, demand, imports, and exports of copper and copper scrap, and the effect of copper scrap prices and supply on the U.S. copper industry involving mining.

6. Historical information comparing consumption, demand, prices, and exports of copper and copper scrap during the expanding economy from the mid-1990s through 2000, in comparison to the contraction of the economy in 2001 and 2002, and again in comparison to the current economic expansion of 2003–2004.

7. Information on any factors, other than exports, that may have contributed to domestic shortages and increased prices for copper scrap. For example, this information could include seasonal effects, reduction in smelting capacity, declines in domestic consumption, changes in technology, consumer preferences, and disruptions in the supply, production or distribution chains.

8. The effect that copper scrap shortages, by type or grade of scrap, have had on any segments of the copper industry that only utilize scrap as an input to their manufactured goods, and are unable to convert to other forms of copper.

9. Information on the trade and other practices of other countries that have had a direct impact on the U.S. copper industry's ability to compete globally.

10. Comments regarding the effectiveness or ineffectiveness of the requested monitoring and controls, and comments or suggestions as to actions that would make the requested actions more effective, if imposed.

11. Economic analyses of the likely effect of export monitoring and/or export controls on the price and availability of copper scrap in the domestic market, as well as the likely effect on other domestic industries and the U.S. economy at large.

The Department will reach a decision on this matter within 45 days of the close of the comment period. This decision and any regulations necessary to implement it, together with a detailed statement of the reasons for the Department's decision, will be published in the **Federal Register**.

Dated: April 19, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–9161 Filed 4–21–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022304A]

Taking and Importing Marine Mammals; Taking Marine MammalsIncidental to Conducting the Precision Strike Weapon (PSW) Testing and Training by Eglin Air Force Base in the Gulf of Mexico

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

ACTION: Notice of receipt of application for an incidental take authorization; request for comments and information.

SUMMARY: NMFS has received a request from Eglin Air Force Base (Eglin AFB), for authorization to harass marine mammals incidental to testing and training during Precision Strike Weapons (PSW) tests in the Gulf of Mexico (GOM), a military readiness activity. As a result of this request, NMFS is proposing to issue a 1–year incidental harassment authorization (IHA) to take marine mammals by Level B harassment incidental to this activity and will propose regulations at a later time that would govern the incidental taking of marine mammals under a Letter of Authorization (LOA) issued to Eglin AFB for a period of up to 5 years after the 1–year IHA expires. In order to issue IHAs and promulgate regulations and LOAs thereunder, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on Eglin AFB's application, NMFS' preliminary determinations on the impact of the activity on marine mammals and suggestions on the content of the regulations.

DATES: Comments and information must be received no later than May 24, 2004.

ADDRESSES: Comments should be addressed to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. The mailbox address for providing email comments on this action is *PR2.022304A@noaa.gov* Include in the subject line of the e-mail comment the following document identifier: 022304A. Comments sent via email, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of references used in this document may

be obtained by writing to this address or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). A copy of the Draft Environmental Assessment (Draft EA) is available by writing to the Department of the Air Force, AAC/EMSN, Natural Resources Branch, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542–5133.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The National Defense Authorization Act of 2004 (NDAA)(Public Law 108–136) amended the definition of ''harassment'' in section 18(A) of the MMPA as it applies to a ''military readiness activity'' to read as follows:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Summary of Request

On February 4, 2004, Eglin AFB submitted a request for a 1–year IHA and for an LOA (to take effect after the expiration of the IHA), for the incidental, but not intentional taking (in the form of noise-related harassment), of marine mammals incidental to PSW testing within the Eglin Gulf Test and Training Range (EGTTR) for the next five years, as authorized by section 101(a)(5) of the MMPA. The EGTTR is described as the airspace over the Gulf of Mexico that is controlled by Eglin AFB is also sometimes referred to as the ''Eglin Water Range.''

PSW missions involve air-to-surface impacts of two weapons, the Joint Air-to-Surface Stand-off Missile (JASSM) AGM–158 A and B and the small-diameter bomb (SDB) (GBU–39/B) that result in underwater detonations of up to approximately 300 lbs (136 kg) and 96 lbs (43.5 kg, double SDB) of net explosive weight, respectively.

The JASSM is a precision cruise missile designed for launch from outside area defenses to kill hard, medium-hard, soft, and area type targets. The JASSM has a range of more than 200 nm (370 km) and carries a 1,000–lb (453.6 kg) warhead. The JASSM has approximately 300 lbs (136 kg) of TNT equivalent net-explosive-weight (NEW). The explosive used is AFX–757, a type of plastic bonded explosive (PBX) formulation with higher blast characteristics and less sensitivity to many physical effects that could trigger unwanted explosions. The JASSM would be launched from an aircraft at altitudes greater than 25,000 ft (7620 m). The JASSM would cruise at altitudes greater than 12,000 ft (3658 m) for the majority of the flight profile until it makes the terminal maneuver toward the target. The JASSM exercise involves a maximum of two live shots (single) and 4 inert shots (single) each year for the next 5 years. Detonation of the JASSM would occur under one of three scenarios: (1) Detonation upon impact with the target (about 5 ft (1.5 m) above the GOM surface); (2) detonation upon impact with a barge target at the surface of the GOM; or (3) detonation at 120 milliseconds after contact with the surface of the GOM.

The SDB is a glide bomb. Because of its capabilities, the SDB system is an important element of the Air Force's Global Strike Task Force. The SDB has a range of up to 50 nm (92.6 km) and carries a 217.4–lb (98.6 kg) warhead. The SDB has approximately 48 lbs (21.7 kg) of TNT equivalent NEW. The explosive used is AFX–757. Launch from an aircraft would occur at altitudes greater than 15,000 ft (4572 m). The SDB would commence a non-powered glide to the intended target. The SDB exercise involves a maximum of six live shots a year, with two of the shots occurring simultaneously and a maximum of 12 inert shots with up to two occurring simultaneously. Detonation of the SDBs would occur under one of two scenarios: (1) Detonation of one or two bombs upon impact with the target (about 5 ft (1.5 m)above the GOM surface), or (2) a height of burst (HOB) test: Detonation of one or two bombs 10 to 25 ft (3 to 7.6 m)above the GOM surface.

The JASSM and SDBs would be launched from B–1, B–2, B–52, F–15, F–16, F–18, or F–117 aircraft. Chase aircraft would include F–15, F–16, and T–38 aircraft. These aircraft would follow the test items during captive carry and free flight but would not follow either item below a predetermined altitude as directed by Flight Safety. Other assets on site may include an E–9 turboprop aircraft or MH–60/53 helicopters circling around the target location. Tanker aircraft including KC–10s and KC–135s would also be used. A second unmanned barge may also be on location to hold instrumentation. Targets include a platform of five containers strapped, braced, and welded together to form a single structure and a hopper barge, typical for transportation of grain.

The proposed action would occur in the northern GOM in the EGTTR. Targets would be located in water less than 200 ft (61 m) deep and from 15 to 24 nm (27.8 to 44.5 km) offshore, south of Santa Rosa Island and south of Cape San Blas Site D3–A.

Description of Marine Mammals Affected by the Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. Information on those species that may be impacted by this activity are discussed in the Eglin AFB application and the Draft EA. A summary of that information is provided in this section.

General information on these species can be found in Wursig *et al.* (2000. The Marine Mammals of the Gulf of Mexico, TAMU Press, College Station, TX) and in the NMFS Stock Assessment Reports (Waring, 2002). This latter document is available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html#Stock Assessment Reports*

Marine mammal species that potentially occur within the EGTTR

include several species of cetaceans and one sirenian, the West Indian manatee. During winter months, manatee distribution in the GOM is generally confined to southern Florida. During summer months, a few may migrate north as far as Louisiana. However, manatees primarily inhabit coastal and inshore waters and rarely venture offshore. PSW missions would be conducted offshore. Therefore, effects on manatees are considered very unlikely.

Cetacean abundance estimates for the study area are derived from GulfCet II (Davis *et al.*, 2000) aerial surveys of the continental shelf within the Minerals Management Service Eastern Planning Area, an area of 70,470 km^2. Texas A&M University and NMFS conducted these surveys from 1996 to 1998. Abundance and density data from the aerial survey portion of the survey best reflect the occurrence of cetaceans within the EGTTR, given that the survey area overlaps approximately one-third of the EGTTR and nearly the entire continental shelf region of the EGTTR where military activity is highest. The GulfCet II aerial surveys identified different density estimates of marine mammals for the shelf and slope geographic locations. Only the shelf data is used because PSW missions will only be conducted on the shelf.

In order to maximize species conservation and protection, the species density estimate data were adjusted to reflect more realistic encounters of these animals in their natural environment. Refer to "*Conservative Estimates of Marine Mammal Densities*'' in this document and Eglin AFB's application for more information on density estimates. A brief description of each marine mammal species observed during GulfCet II aerial surveys on the shelf that has the potential to be present in the PSW test area is summarized here.

Atlantic Bottlenose Dolphins (Tursiops truncatus)

Bottlenose dolphins are distributed worldwide in tropical and temperate waters. In the GOM, several coastal and offshore stocks have been identified (see Waring *et al.* 2002) and one stock occurs in the inshore waters of the entire GOM. Waring *et al.* (2002) provides the following minimum population estimates for the GOM bottlenose dolphin stocks: outer shelf, 43,233; shelf and slope, 4,530; western Gulf, 2,938; northern Gulf, 3,518; eastern Gulf, 8,953; and Bay, Sound & Estuarine waters, 3,933. Baumgartner et al. (2001) suggest a bimodal distribution in the northern GOM, with a shelf population occurring out to the 150–m (492 ft) isobath and a shelf break population out to the 750–m (2461 ft) isobath. Occurrence in water with depth greater than 1,000 m (3281 ft) is not considered likely. Migratory patterns from inshore to offshore are likely associated with the movements of prey rather than a preference for a particular habitat characteristic (such as surface water temperature) (Ridgeway, 1972; Irving, 1973; Jefferson *et al.*, 1992).

The average herd or group size of Atlantic bottlenose dolphins in shelf and slope waters was approximately four and 10 individuals, respectively, per herd as determined by GulfCet II surveys of eastern Gulf waters (Davis et al., 2000). The diet of Atlantic bottlenose dolphins consists mainly of fish, crabs, squid, and shrimp (Caldwell and Caldwell, 1983).

Atlantic Spotted Dolphins (Stenella frontalis)

Atlantic spotted dolphins are endemic to the tropical and warm temperate Atlantic Ocean. This species ranges from the latitude of Cape May, NJ, along mainland shores to Venezuela, including the GOM and Lesser Antilles (Caldwell and Caldwell, 1983). Sightings of this species are concentrated along the continental shelf and shelf edge (Fritts *et al.*, 1983), but they also occur farther offshore. At one time, Atlantic spotted dolphins were considered to be the most abundant species of dolphin in offshore waters (Schmidly, 1981), with most sightings occurring at an average of 168 km (90.7 nm) offshore. The best available abundance estimate for this species in the northern GOM is the combined estimate of abundance for both the OCS (39,307, CV=0.31) and oceanic (238, CV=0.87) waters from 1996 to 2001, which is 39,545 (CV=0.31)(NMFS, 2003).

The preferred depth of the spotted dolphin is believed to be associated with food availability and water temperature. The diet of the Atlantic spotted dolphin consists of squid and fish.

Dwarf Sperm Whales and Pygmy Sperm Whales

Dwarf sperm whales (*Kogia simus*) commonly inhabit the deeper offshore water, generally eating squid, crustaceans, and fish (Caldwell and Caldwell, 1983), but they do move into inshore waters during calving season. The pygmy sperm whale (*Kogia breviceps*) has a diet similar to that of the dwarf sperm whale. Both pygmy and dwarf sperm whales have been sighted in the northern GOM primarily along the continental shelf edge and in deeper shelf waters during all seasons except winter (Mullin *et al.*, 1994). The estimate of abundance for dwarf and pygmy sperm whales in oceanic waters is 809 (CV=0.33)(Mullin and Fulling, in prep), which is the best available abundance estimate for these species in the northern GOM. Separate estimates of abundance cannot be made due to uncertainty of species identification (NMFS, 2003). Dwarf and pygmy sperm whales have a high percentage of strandings relative to percent population of all cetaceans (Mullin *et al.*, 1994).

Impacts to Marine Mammals

Potential impacts to marine mammals from the detonation of the PSWs and SDBs include both lethal and non-lethal injury, as well as Level B behavioral harassment. Although unlikely due to the extensive mitigation measures proposed by Eglin AFB, marine mammals have the potential to be killed or injured as a result of a blast due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called "cavitation.'' This is a region of near total physical trauma within which no animals would be expected to survive. A second criterion used by NMFS for categorizing taking by mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered to be debilitating and thereby potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves.

For the acoustic analysis, the exploding charge is characterized as a point source. The impact thresholds used for marine mammals relate to potential effects on hearing from underwater noise from detonations. For the explosives in question, actual detonation heights would range from 0 to 25 ft (7.6 m) above the water surface. Detonation depths would range from 0 to 80 ft (73.2 m) below the surface. To bracket the range of possibilities, detonation scenarios just above and below the surface were used to analyze bombs set to detonate on contact with the target barge. Potentially, the barge may interact with the propagation of noise into the water. However, barge effects on the propagation of noise into the water column cannot be determined without in-water noise monitoring at the time of detonation.

Potential exposure of a sensitive species to detonation noise could theoretically occur at the surface or at

any number of depths with differing consequences. As a conservative measure a mid-depth scenario was selected to ensure the greatest direct path for the harassment ranges, and to give the greatest impact range for the injury thresholds.

Explosive Criteria and Thresholds for Impact of Noise on Marine Mammals

Criteria and thresholds that are the basis of the analysis of PSW noise impacts to cetaceans were initially used in U.S. Navy's environmental impact statements (EISs) for ship shock trials of the SEAWOLF submarine and the USS WINSTON S. CHURCHILL vessel (DoN, 1998; DoN, 2001) and accepted by NMFS as representing the best science available (see 66 FR 22450, May 4, 2001). NMFS continues to believe that this represents the best science available. The following sections summarize the information contained in those actions.

Criteria and Thresholds: Lethality

The criterion for mortality for marine mammals used in the CHURCHILL Final EIS is 'onset of severe lung injury.' This is conservative in that it corresponds to a 1 percent chance of mortal injury, and yet any animal experiencing onset severe lung injury is counted as a lethal take. The threshold is stated in terms of the Goertner (1982) modified positive impulse with value "indexed to 31 psi-ms.'' Since the Goertner approach depends on propagation, source/animal depths, and animal mass in a complex way, the actual impulse value corresponding to the 31–psi index is a complicated calculation. The acoustic threshold is derived from:

$I_{1\%} = 42.9\ (M/34)^{1/3}$ psi-ms,

where M is animal mass in kg. Again, to be conservative, CHURCHILL used the mass of a calf dolphin (at 12.2 kg), so that the threshold index is 30.5 psi-ms.

Criteria and Thresholds: Injury (Level A Harassment)

Non-lethal injurious impacts are defined in this document as eardrum rupture (i.e., tympanic-membrane (TM) rupture) and the onset of slight lung injury. These are considered indicative of the onset of injury. The threshold for TM rupture corresponds to a 50 percent rate of rupture (i.e., 50 percent of animals exposed to the level are expected to suffer TM rupture); this is stated in terms of an energy flux density (EFD) value of 1.17 in-lb/in^2, which is about 205 dB re 1 µPa2–s. (Note: EFD is the time integral of the squared pressure divided by the impedance in values of dB re 1 µPa2–s.) This recognizes that TM rupture is not necessarily a life-threatening injury, but is a useful index of possible injury that is well-correlated with measures of permanent hearing impairment (e.g., Ketten (1998) indicates a 30 percent incidence of permanent threshold shift (PTS) at the same threshold).

Criteria and Thresholds: Non-injurious Impacts (Level B Harassment)

Marine mammals may also be harassed due to noise from PSW missions involving high explosive detonations in the EGTTR. The CHURCHILL criterion for non-injurious harassment, as established through NMFS' incidental take rulemaking (see 66 FR 22450, May 4, 2001), is temporary (auditory) threshold shift (TTS), which is a slight, recoverable loss of hearing sensitivity (DoN, 2001). The criterion for TTS used in this document is 182 dB re 1 mPa2–s maximum EFD level in any 1/3–octave band at frequencies above 100 Hz for all toothed whales (e.g., sperm whales, beaked whales, dolphins). (Note: 1/3–octave band is the EFD in a 1/3–octave frequency band; the 1/3 octave selected is the hearing range at which the affected species' hearing is believed to be most sensitive.) A 1/3–octave band above 10 Hz is used for impact assessments on all baleen whales, but those species do not inhabit the affected environment of this project.

The CHURCHILL rulemaking also established a second criterion for estimating TTS threshold: 12 psi. The appropriate application of this second TTS criterion is currently under debate, as this 12 psi criterion was originally established for estimating the impact of a 10,000–lb (4536–kg) explosive to be employed for the Navy's shock trial. It was introduced to provide a more conservative safety zone for TTS when the explosive or the animal approaches the sea surface (for which cases the explosive energy is reduced but the peak pressure is not).

For large explosives (2000 to 10,000 pounds) and explosives/ animals not too close to the surface, the TTS impact zones for these two TTS criteria are approximately the same. However, for small detonations, some acousticians contend the ranges for the two TTS thresholds may be quite different, with ranges for the peak pressure threshold several times greater than those for energy. Eglin AFB endorses an approach, currently being developed by the Navy, for appropriately "scaling'' the peak pressure threshold, in order to more accurately estimate TTS for small shots while preserving the safety feature provided by the peak pressure threshold. As such, Eglin AFB believes the energy based criterion for TTS, 182 dB re 1 µPa^2–s (maximum EFD level in any 1/3–octave band), used alone, conservatively estimates the zone in which non-injurious harassment of marine mammals may occur. NMFS acousticians are currently reviewing the scientific basis for this DOD proposal and will make a determination on whether scaling is appropriate. If NMFS determines that scaling is not appropriate, it will require Eglin AFB to provide revised estimated harassment take levels prior to its decision on issuance of an IHA.

Criteria and Thresholds: Behavioral Modification (Sub-TTS)

No strictly sub-TTS behavioral responses (i.e., Level B harassment) are anticipated with the JASSM and SBD test activities because there are no successive detonations (the 2 SBD explosions occur almost simultaneously) which could provide causation for a behavioral response in the absence of a Level B response due to TTS. Also, repetitive exposures (below TTS) to the same resident animals are highly unlikely due to the infrequent JASSM and SBD test events, the potential variability in target locations, and the continuous movement of marine mammals in the northern GOM.

Incidental Take Estimation

For Eglin AFB's PSW exercises, three key sources of information are necessary for estimating potential take levels from noise on marine mammals: (1) The zone of influence (ZOI) for noise exposure; (2) The number of distinct firing or test events; and (3) the density of animals that potentially reside within the ZOI.

Noise ZOIs were calculated for depth detonation scenarios of 1 ft (0.3 m) and 20 ft (6.1 m) for lethality and for harassment (both Level A and Level B). To estimate the number of potential "takes'' or animals affected, the adjusted data on cetacean population information from ship and aerial surveys was applied to the various impact zones.

Table 6–2 in Eglin's application gives the estimated impact ranges for various explosive weights for summer and wintertime scenarios. For the JASSM, this range, in winter, extends to 320 m (1050 ft), 590 m (1936 ft) and 3250 m (10663 ft), for potential mortality (31 psi-ms), injury (205 dB re 1 µPa^2 -s) and TTS (182 dB re 1 µPa^2–s) zones, respectively. SDB scenarios are for in-air detonations at heights of 1.5 m (5 ft) and 7.6 m (25 ft) at both locations. JASSM detonations were modeled for near surface (i.e., 1–ft (0.3–m) depth) and below surface >20–ft depth (>6.1- m)).

To account for "double'' (2 nearly simultaneous) events, the charge weights are added (doubled) when modeling for the determination of energy estimates (since energy is proportional to weight). Pressure estimates only utilize the single charge weights for these estimates.

Applying the lethality (31 psi) and harassment (182 and 205 dB) impact ranges in Eglin AFB's Table 6–2 to the calculated species densities, the number of animals potentially occurring within the ZOIs absent mitigation was estimated. These results are presented in Tables 1, 2, and 3 in this document and in Tables 6–3, 6–4, and 6–5 in Eglin AFB's application. In summary, without any mitigation, a remote possibility exists for one each of both the bottlenose and the Atlantic spotted dolphins to be exposed to noise levels sufficient to cause mortality. Additionally, nearly 3 cetaceans could be exposed to injurious Level A harassment noise levels (205 dB re 1 μPa^2–s), and as few as 3 or as many as 103 cetaceans (depending on the season and water depth) would potentially be exposed (annually) to a non-injurious (TTS) Level B harassment noise level (182 dB re 1 μPa^2–s). None of these impact estimates consider mitigation measures that will be employed by Eglin AFB to minimize potential impacts to protected species. These mitigation measures are described next and are anticipated to greatly reduce potential impacts to marine mammals, in both numbers and degree of severity.

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Table 1. Marine Mammal Densities and Risk Estimates for Level A Harassment (205 dB EFD 1/3-Octave Band) Noise Exposure

Species	Density	Number of Animals Exposed from 1-ft Depth Detonations	Number of Animals Exposed from >20-ft Depth Detonations
Summer			
Dwarf/pygmy sperm whale	0.013	0.0024	0.0247
Bottlenose dolphin	0.81	0.1491	1.5417
Atlantic spotted dolphin	0.677	0.1246	1.2886
T. truncatus/S. frontalis	0.053	0.0098	0.1009
TOTAL		**0.29**	**3.0**
Winter			
Dwarf/pygmy sperm whale	0.013	0.0024	0.0285
Bottlenose dolphin	0.81	0.1491	1.7737
Atlantic spotted dolphin	0.677	0.1246	1.4824
T. truncatus/S. frontalis	0.053	0.0098	0.1161
TOTAL		**0.29**	**3.4**

Table 2. Marine Mammal Densities and Risk Estimates for Level B Harassment (182 dB EFD 1/3-Octave Band) Noise Exposure

Species	Density	Number of Animals Exposed from 1-ft Depth Detonations	Number of Animals Exposed from >20-ft Depth Detonations
Summer			
Dwarf/pygmy sperm whale	0.013	0.0226	0.5070
Bottlenose dolphin	0.81	1.4089	31.5886
Atlantic spotted dolphin	0.677	1.1776	26.3735
T. truncatus/S. frontalis	0.053	0.0922	2.0669
TOTAL		**2.7**	**60.5**
Winter			
Dwarf/pygmy sperm whale	0.013	0.0280	0.8633
Bottlenose dolphin	0.81	1.7448	53.7906
Atlantic spotted dolphin	0.677	1.4583	44.9300
T. truncatus/S. frontalis	0.053	0.1142	3.5196
TOTAL		**3.3**	**103.1**

Table 3. Marine Mammal Densities and Risk Estimates for Lethality (31 psi) Noise Exposure

Species	Density	Number of Animals Exposed from 1-ft Depth Detonations	Number of Animals Exposed from >20-ft Depth Detonations
Summer			
Dwarf/pygmy sperm whale	0.013	0.0005	0.0084
Bottlenose dolphin	0.81	0.0286	0.5212
Atlantic spotted dolphin	0.677	0.0239	0.4356
T. truncatus/S. frontalis	0.053	0.0019	0.0341
TOTAL		**0.0549**	**0.992**
Winter			
Dwarf/pygmy sperm whale	0.013	0.0005	0.0084
Bottlenose dolphin	0.81	0.0286	0.5212
Atlantic spotted dolphin	0.677	0.0239	0.4356
T. truncatus/S. frontalis	0.053	0.0019	0.0341
TOTAL		**0.0549**	**0.992**

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Mitigation and Monitoring

Prior to the planned detonation, trained observers aboard two helicopters will survey (visually monitor) the test area, a very effective method for detecting sea turtles and cetaceans. The area to be surveyed will be 1.75 nm (3.2 km) in every direction from the target (this is approximately the size of the largest harassment ZOI). The helicopters fly approximately 250 ft (0.5 m) above the sea surface to allow observers to scan a large distance. Using 25X power ''Big-eye'' binoculars, surface observation would be effective out to several kilometers. In addition, another trained observer aboard a surface support vessel will conduct ship-based monitoring for non-participating vessels as well as protected species. Weather that supports the ability to sight small marine life (e.g., sea turtles) is required to effectively mitigate impacts on marine life (DoN, 1998). Wind, visibility, and surface conditions in the GOM are the most critical factors affecting mitigation operations. Higher winds typically increase wave height and create ''white cap'' conditions, both of which limit an observer's ability to locate surfacing marine mammals and sea turtles. PSW missions would be delayed if the Beaufort scale sea state were greater than 3. This would maximize detection of marine mammals and sea turtles.

Visibility is also a critical factor for flight safety issues. A minimum ceiling of 305 m (1000 ft) and visibility of 5.6 km (3 nm) is required to support mitigation and safety-of-flight concerns (DoN, 2001).

Aerial Survey/Monitoring Team

Eglin AFB has agreed to train personnel to conduct aerial surveys for protected species. The aerial survey/monitoring team would consist of two observers and a pilot familiar with flying marine mammal/turtle surveys. A helicopter provides a preferable viewing platform for detection of protected marine species. Each aerial observer would be experienced in marine mammal surveying and be familiar with species that may occur in the area. Each aircraft would have a data recorder who would be responsible for relaying the location (latitude and longitude), the species, and the number of animals sighted. The aerial monitoring team would also identify large schools of fish, jellyfish aggregations, and any large accumulation of *Sargassum* that could potentially drift into the ZOI. Standard line transect aerial surveying methods, as developed by NMFS (Blaylock and Hoggard, 1994; Buckland *et al.*, 1993) would be used. Aerial observers are expected to have above average to excellent sighting conditions at sunrise to 1.85 km (1 nm) on either side of the aircraft within the weather limitation noted previously. Observed marine mammals and sea turtles would be identified to species or the lowest possible taxonomic level and the relative position recorded. Mission activity would occur no earlier than 3 hours after sunrise and no later than 3 hours prior to sunset to ensure adequate daylight and pre- and post-mission monitoring.

Shipboard Monitoring Team

Eglin AFB has agreed to conduct shipboard monitoring to reduce impacts to protected species. The monitoring would be staged from the highest point possible on a mission ship. Observers would be experienced in shipboard surveys and be familiar with the marine life of the area. The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25X power ''Big-Eye'' binoculars, as these have been successfully used in monitoring activities from ships), which should allow the observer to sight surfacing mammals from as far as 11.6 km (6.3 nm) and provide overlapping coverage from the aerial team. A team leader would be responsible for reporting sighting locations, which would be based on bearing and distance.

The aerial and shipboard monitoring teams would have proper lines of communication to avoid communication deficiencies. The observers from the aerial team and operations vessel will have direct communication with the lead scientist aboard the operations vessel. The lead scientist reviews the range conditions and recommends a Go/No-Go decision from the test director. The test director recommends the Go/No-Go decision to the Officer in Tactical Command, who makes the final Go/No-Go decision.

Mitigation Procedures Plan

Stepwise mitigation procedures for PSW missions are outlined here. All zones (mortality, injury, TTS, and safety zones) are monitored.

Pre-mission Monitoring: The purposes of pre-mission monitoring are to (1)

evaluate the test site for environmental suitability of the mission (e.g., relatively low numbers of marine mammals and turtles, few or no patches of Sargassum, etc.) and (2) verify that the ZOI is free of visually detectable marine mammals, sea turtles, large schools of fish, large flocks of birds, large Sargassum mats, and large concentrations of jellyfish (both are possible indicators of turtle presence). On the morning of the test, the lead scientist would confirm that the test sites can still support the mission and that the weather is adequate to support mitigation.

(a) *Five Hours Prior to Mission:* Approximately 5 hours prior to the mission, or at daybreak, the appropriate vessel(s) would be on-site in the primary test site near the location of the earliest planned mission point. Observers onboard the vessel will assess the suitability of the test site, based on visual observation of marine mammals and sea turtles, the presence of large Sargassum mats, and overall environmental conditions (visibility, sea state, etc.). This information will be relayed to the lead scientist.

(b) *Two Hours Prior to Mission:* Two hours prior to the mission, aerial monitoring would commence within the test site to evaluate the test site for environmental suitability. Monitoring would commence at the same end of the test site that the mission ship would be entering. Evaluation of the entire test site would take approximately one hour. Shipboard observers would monitor the area around the ship, and the lead scientist would enter all marine mammals and sea turtle sightings, including time of sighting, into a marine animal tracking and sighting database.

(c) *Forty Minutes Prior to Mission:* Forty minutes prior to the mission, the aerial monitoring team would begin monitoring the 12.56 nm2 safety buffer around the target area. The shipboard monitoring and acoustic monitoring teams would combine with the aerial team to monitor the area immediately around the mission area including both the ZOIs and buffer zone.

(d) *Fifteen Minutes Prior to Detonation:* Aerial and shipboard viewers would be instructed to leave the area and remain outside the safety area (over 2 nm (3.7 km) from impact). Visual monitoring would continue to document any missed animals that may have gone undetected during the past two hours.

(e) *Go/No-Go Decision Process:* The lead scientist would plot and record sightings and bearing for all marine animals detected. This would depict animal sightings relative the to the mission area. The lead scientist would have the authority to declare the range fouled and recommend a hold until monitoring indicates that the ZOI is and will remain clear of detectable animals. The ZOI (for preventing TTS (182 dB re 1 mPa2–s)) is estimated for the specific charge weight being used, the depth of blast, and the season. For example, for the JASSM, this range, in winter, would extend to 3250 m (10663 ft), for potential TTS.

The mission would be postponed if:

(1) Any marine mammal or sea turtle is visually detected within the ZOI. The delay would continue until the marine mammal or sea turtle that caused the postponement is confirmed to be outside of the ZOI due to the animal swimming out of the range.

(2) Any marine mammal or sea turtle is detected in a monitoring zone of 2–nm (3.7–km) radius and subsequently cannot be reacquired. The mission would not continue until the last verified location is outside of the ZOI and the animal is moving away from the mission area.

(3) Large *Sargassum* rafts or large concentrations of jellyfish are observed within the ZOI. The delay would continue until the *Sargassum* rafts or jellyfish that caused the postponement are confirmed to be outside of the ZOI either due to the current and/or wind moving them out of the mission area.

(4) Large schools of fish are observed in the water within 1 nm (1.8 km) of the mission area. The delay would continue until the large fish schools are confirmed to be more than 1 nm outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. Aerial monitoring is limited by fuel and the on-station time of the monitoring aircraft. If a live warhead failed to explode, operations would attempt to recognize and solve the problem while continuing with all mitigation measures in place. The probability of this occurring is very remote but it exists. Should a weapon fail to explode, the activity sponsor would attempt to identify the problem and detonate the charge with all marine mammal and sea turtle mitigation measures in place as described.

Post-mission monitoring: Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals or sea turtles. Post-detonation monitoring would commence immediately following each detonation. The vessel could be assisted by aerial surveys over the same time period. The helicopter would resume transects in the area of the detonation and continue monitoring for at least two hours, concentrating on the area down current of the test site. Aerial and shipboard monitoring is intended to locate and identify dead and injured animals.

Although it is highly unlikely that marine mammals or sea turtles would be killed or seriously injured by this activity, marine mammals or sea turtles killed by an explosion would likely suffer lung rupture, which would cause them to float to the surface immediately due to air in the blood stream. Animals that were not killed instantly but were mortally wounded would likely resurface within a few days, though this would depend on the size and type of animal, fat stores, depth, and water temperature (DoN, 2001). The monitoring team would attempt to document any marine mammals or turtles that were killed or injured as a result of the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the observation teams would be documented and reported to the lead scientist.

Post-mission monitoring activities could include coordination with marine animal stranding networks. NMFS maintains stranding networks along coasts to collect and circulate information about marine mammal and sea turtle standings. Local coordinators report stranding data to state and regional coordinators. Any observed dead or injured marine mammal or sea turtle would be reported to the appropriate coordinator.

Summary of Mitigation Plan

Should human safety concerns arise or protected species are sighted within the noise impact zones, the test would be postponed. The area to be monitored will be 2.00 nm (1.75 km) in every direction from the target (approximately the size of the largest harassment ZOI). The total area to be monitored for marine mammals and sea turtles is 12.56 nm2. If a protected species is observed within this area, the test will be stopped or postponed until the area is clear of the animals. The survey vessels and aircraft will leave the safety footprint immediately prior to weapons launch. This will be no more than 15 minutes prior to impact of the weapons at the target area.

Avoidance of impacts to schools of cetaceans will most likely be realized through these measures since groups of dolphins are relatively easy to spot with the survey distances and methods that will be employed. Typically solitary marine mammals such as dwarf/pygmy

sperm whales and sea turtles, while more challenging to detect, will also be afforded substantial protection through pre-test monitoring.

One helicopter and vessel(s) would conduct post-mission monitoring for two hours after each mission. The monitoring team would attempt to document any marine mammals or turtles that were killed or injured as a result of the test and, if practicable, recover and examine any dead animals. Post-mission monitoring activities could include coordination with marine animal stranding networks.

Hardbottom habitats and artificial reefs would be avoided to alleviate any potential impacts to protected habitat. PSW testing would be delayed if large Sargassum mats were found in the ZOI. Testing would resume only when the mats move outside of the largest ZOI. The PSW mission team will make every effort to recover surface debris, from the target or the weapons following test activities.

Conservative Estimates of Marine Mammal Densities

By using conservative mathematic calculations, conservative density estimates can serve as a respectable mitigation technique for take estimates. Marine mammal densities used to calculate takes were based on the most current and comprehensive GOM surveys available (GulfCet II). The densities are adjusted for the time the animals are submerged, and further adjusted by applying standard deviations to provide an approximately 99 percent confidence level. As an example, the density estimates for bottlenose dolphins range from 0.06 to 0.15 animals/km^2 in GulfCet II aerial surveys of the shelf and slope. However, the final adjusted density used in take calculations is 0.81 animals/km^2.

Reporting

NMFS proposes to require Eglin AFB to submit an annual report on the results of the monitoring requirements mentioned previously in this document. This annual report will be due within 120 days of the expiration of the IHA. This report will include a discussion on the effectiveness of the mitigation in addition to the following information: (1) Date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals and their populations; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and numbers that may have been harassed due to undetected presence within the safety zone; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

Research

Although Eglin AFB does not currently conduct independent Air Force monitoring efforts, Eglin AFB's Natural Resources Branch does participate in marine animal tagging and monitoring programs lead by other agencies. Additionally, the Natural Resources Branch also supports participation in annual surveys of marine mammals in the GOM with NOAA Fisheries. From 1999 to 2002, Eglin AFB's Natural Resources Branch has, through a contract representative, participated in summer cetacean monitoring and research opportunities. The contractor participated in visual surveys in 1999 for cetaceans in GOM, photographic identification of sperm whales in the northeastern Gulf in 2001, and as a visual observer during the 2000 Sperm Whale Pilot Study and the 2002 sperm whale Satellite-tag (S-tag) cruise. Support for these research efforts is anticipated to continue.

Eglin AFB conducts other research efforts that utilize marine mammal stranding information as a means of ascertaining the effectiveness of mitigation techniques. Stranding data is collected and maintained for the Florida panhandle and Gulf-wide areas. This is undertaken through the establishment and maintenance of contacts with local, state, and regional stranding networks. Eglin AFB assists with stranding data collection by maintaining its own team of stranding personnel. In addition to simply collecting stranding data, various analyses are performed. Stranding events are tracked by year, season, and NOAA Fisheries statistical zone, both Gulf-wide and on the coastline in proximity to Eglin AFB. Stranding data is combined with records of EGTTR mission activity in each water range and analyzed for any possible correlation. In addition to being used as a measure of the effectiveness of mission mitigation, stranding data can yield insight into the species composition of cetaceans in the region.

Endangered Species Act (ESA)

Eglin AFB requested consultation with NMFS on February 4, 2004. Because the proposed issuance of an IHA to Eglin AFB is a federal action, NMFS has also begun consultation on the proposed issuance of IHAs and/or LOAs under section 101(a)(5)(A) and 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on whether or not to issue an IHA.

National Environmental Policy Act (NEPA)

In December, 2003, Eglin AFB released draft EA on this proposed activity. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA and rulemaking. A copy of the Eglin AFB EA for this activity is available by contacting either Eglin AFB or NMFS (see **ADDRESSES**).

Conclusions

Preliminarily, NMFS has determined that this action is expected to have a negligible impact on the affected species or stocks of marine mammals in the GOM. No take by serious injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. The information contained in Eglin's EA and incidental take application support the preliminary finding that these impacts will be mitigated by implementing a conservative safety range for marine mammal exclusion, incorporating aerial and shipboard survey monitoring efforts in the program both prior to, and after, detonation of explosives, and provided detonations are not conducted whenever marine mammals are either detected within the safety zone, or may enter the safety zone at the time of detonation, or if weather and sea conditions preclude adequate aerial surveillance. Since the taking will not result in more than the incidental harassment of certain species of marine mammals, will have only a negligible impact on these stocks, will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and, through implementation of required mitigation and monitoring measures, will result in the least practicable adverse impact on the affected marine mammal stocks, NMFS has preliminarily determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the IHA can be issued.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and the application for regulations request (see **ADDRESSES**).

Dated: April 16, 2004.

Phil Williams,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–9145 Filed 4–21–04; 8:45 am]

BILLING CODE 9145–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041504A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NOAA Fisheries (Assistant Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Assistant Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Assistant Regional Administrator proposes to issue EFPs in response to an application submitted by the Cape Cod Commercial Hook Fisherman's Association (CCCHFA), in collaboration with Massachusetts Division of Marine Fisheries (DMF), and Research, Environmental and Management Support (REMSA). These EFPs would allow up to 31 vessels to fish for haddock using longline gear or jig gear in portions of the following closed areas during the period of May 2004 through February 2005: Cashes Ledge Closure Area, Western Gulf of Maine Closure Area (WGOM), Georges Bank (GB) Closed Area I (CA I), GB Closed Area II (CA II), and in Rolling Closure Area III. The study will take place at various times during the months of January, February, and May through September 2004, as listed in the table below. The purpose of the proposed study is to determine if hook-and-line gear could be used to target haddock with minimal bycatch of cod in order to establish Special Access Programs (SAPs) proposed under Amendment 13 to the FMP.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before May 7, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Haddock SAP EFP Proposal.'' Comments may also be sent via fax to (978) 281–9135, or submitted via e-mail to the following address: *da448@noaa.gov*.

Copies of the Environmental Assessment (EA) are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, Fishery Management Specialist, phone: 978–281–9341, fax: 978–281–9135, e-mail: *heather.sagar@noaa.gov*.

SUPPLEMENTARY INFORMATION: CCCHFA, in collaboration with Massachusetts DMF, and REMSA, submitted a request on March 5, 2004, to conduct an exempted fishery for GB haddock within portions of Rolling Closure Area III, Cashes Ledge Closure Area, WGOM, GB CA I, and GB CA II. The purpose of the proposed study is to determine if hook-and-line gear could be used to target haddock with minimal bycatch of cod in order to establish SAPs. This proposal builds on an ongoing study that began on October 1, 2003, and which proposes to end on September 30, 2004. Preliminary results from this ongoing study demonstrate the viability of utilizing hook-and-line gear to reduce bycatch of cod in a portion of GB CA I.

The CCCHFA's most recent proposal requests authorizing 31 commercial hook-and-line vessels to fish for and possess haddock in the additional areas listed above during the time period May 1, 2004, through February 28, 2005. The study proposed that vessels would fish under a hard Total Allowable Catch (TAC) allocation of 788 mt of haddock and 39.4 mt of Atlantic cod. Similar to the first two portions of this experiment, Days-At-Sea (DAS) would be used. Throughout this study, CCCHFA hopes to determine the appropriate season, bait, and location for a directed haddock fishery in the above identified areas that would have minimal impact on other groundfish stocks, particularly GB cod, for the purpose of developing a SAP. Participating vessels would be prohibited from fishing in areas outside of the identified areas during an experimental fishing trip. This study would follow normal fishing practices. The experimental fishery would be terminated if any of the proposed TACs are exceeded.

PROPOSED STUDY AREAS AND SEASONS

Ref. #	Area	Closure Type	Duration	Location	# Trips	# DAS per Trip	Haddock	Cod
I	Rolling Closure III	Seasonal	5/04 - 6/04	43°15′ X 69°52′ 43°18′ X 69°40′ 43°13′ X 69°17′ 42°58′ X 69°40′	16	1/2 DAS/Trip	32 mt	1.6 mt
II	Cashes	Year-Round	12/04 - 2/05 5/04 - 9/04	Entire Cashes Closed Area	64	1 DAS/Trip	128 mt	6.4 mt
III	WGOM	Year-Round	5/04 - 6/04 12/04 - 2/05	WGOM: North of 42°35′ South of 43°00′	*40*	*1/2 DAS/Trip*	*80 mt*	*4 mt*
IV	*GB CAI*	*Year-Round*	*10/04 - 12/04*	*CAI: North of Loran 43660*	*24*	*1/2 DAS/Trip*	*48 mt*	*2.4 mt*
V	*GB CAII*	*Year-Round*	*5/04 - 9/04*	*CAII: North of 42°00′*	*40*	*1 DAS/Trip*	*200 mt*	*10 mt*
VI	*GB CAII*	*Year-Round*	*10/04 - 2/05*	*CAII: North of 41°40′*	*40*	*3 DAS/Trip*	*300 mt*	*15 mt*
TOTAL					*244 trips*	*264 DAS*	*788 mt*	*39.4 mt*

The applicant estimates that longline trips would average 4,470 lb (2,027.6 kg) of haddock and less then 300 lb (136.1 kg) of cod daily. Jig trips are estimated to land a maximum of 2,000 lb (907.2 kg) of haddock and less then 100 lb (45.4 kg) of cod daily. All fish landed would be subject to the minimum size. Although the applicant would be exempt from the haddock trip limits, they would not be exempt from the cod trip limit requirements.

REMSA scientific staff would be present on board each participating vessel, equating to 100–percent scientific data collector coverage for this experimental fishery. Scientific data collectors would be responsible for collecting all biological and environmental data on NMFS observer forms. CCCHFA would develop a full report of results and would submit this information to the Regional Office monthly. The EFPs would contain a provision that the RA has the authority to discontinue the proposed experimental fishery at any time, e.g., the RA would terminate the EFP should the individual closed area TACs, or the overall TACs of 39.4 mt for GB cod and 788 mt for GB haddock, be exceeded.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the activities proposed to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to 31 vessels exempting them from portions of Rolling Closure Area III, Cashes Ledge Closure Area, WGOM, GB CA I, and GB CA II, the haddock trip limit, and the 3,600–hook-limit restrictions of the FMP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 19, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–906 Filed 4–21–04; 8:45 am]

BILLING CODE 3510–22–S

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting

DATE AND TIME: Wednesday, May 5, 2004, at 9 a.m.

PLACE: U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Ave., NW., Room 3000, Rachel L. Carson Great Hall, Ariel Rios North Building, Washington, DC.

(*Metro Riders:* Take the Orange or Blue Line to Federal Triangle Metro Stop).

STATUS: This meeting will be open to the public.

NOTE: *Early Arrival:* Those attending are advised to arrive early for registration and security check.

PURPOSE: To conduct a public hearing on the present status of computerized electronic voting systems.

The Following Witness Panels Will Be Presented: Technology Panel, Vendor Panel, Election Administrator Panel, Research Panel and Advocacy Organization Panel.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

DeForest B. Soaries, Jr.,

Chairman, U.S. Election Assistance Commission.

[FR Doc. 04–9304 Filed 4–20–04; 2:03 pm]

BILLING CODE 6820–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting and retreat.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday–Saturday, May 20–22, 2004.

ADDRESSES: Sagebrush Inn and Conference Center, 1508 Paseo Del Pueblo Sur, Taos, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, May 20, 2004

9–11:30 a.m. New Member Orientation
1–5 p.m. Informal Round Table with Agencies

Friday, May 21, 2004

8 a.m. to Noon Board Planning and Group Discussion
1:30 p.m.–3:30 p.m. Team Building

Saturday, May 22, 2004

8–10 a.m. NNMCAB Board Meeting
- Public Comment
- Board Business
- Consideration of Recommendations
- Consideration of Bylaws Amendments

10 a.m. to Noon Wrap-up and Board Discussion
Noon Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other

Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on April 16, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–9148 Filed 4–21–04; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, May 11, 2004, 6 p.m.–9 p.m.

ADDRESSES: Fernald Closure Project Site, 7400 Willey Road, Trailer 214, Hamilton, OH 45013–9402.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6 p.m.—Call to Order
6–6:20 p.m.—Chairs Remarks, Ex Officio Announcements and Updates
6:20–7 p.m—Update on Silos Projects Issues
7–7:20 p.m.—Report on SSAB Chairs Meeting
7:20–8 p.m.—Status of Recommendations
8–8:45 p.m.—Follow-up to May 10 Fernald Stewardship Summit
8:45–9 p.m.—Public Comment
9 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on April 16, 2004.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–9160 Filed 4–21–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1178–003, et al.]

Sempra Energy Resources, et al.; Electric Rate and Corporate Filings

April 14, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sempra Energy Resources; Sempra Energy Solutions

[Docket No. ER01–1178–003 and Docket No. ER00–3444–003]

Take notice that on April 9, 2004, Sempra Energy Resources and Sempra Energy Solutions submitted an updated market power analysis and tendered for filing amendments to their respective market-based rate tariffs in compliance with the Commission's order issued on November 17, 2003 in Docket No. EL01–118–000.

Comment Date: April 30, 2004.

2. Commonwealth Edison Company

[Docket No. ER03–1335–002]

Take notice that on April 9, 2004, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd) tendered for filing with the Commission in accordance with a proposed change in the effective date of the rates for transmission and scheduling services. The Commission issued an order on November 10, 2003, in Docket No. ER03–1335, conditionally accepting ComEd's September 12, 2003 rate filing and authorizing an April 12, 2004 effective date, 105 FERC 61,186 (2003). ComEd) states that due to billing and settlement difficulties associated with rate changes that occur on a day other than the 1st day of a calendar month, ComEd desires to implement the Phase I rate change on May 1, 2004. Accordingly, an effective date of May 1, 2004 is requested.

ComEd states that copies of the filing were served on parties to the service list in Docket No. ER03–1335–000.

Comment Date: April 30, 2004.

3. PJM Interconnection, L.L.C.

[Docket Nos. ER04–521–001]

Take notice that on April 13, 2004, PJM Interconnection L.L.C. (PJM) filed a letter stating that, starting June 1, 2004, the west to east capacity on the pathway that will be used for the single dispatch of the combined Commonwealth Edison Company (ComEd) and PJM region will be reduced from 500 MW to 300 MW. PJM notes that ComEd is continuing efforts to procure additional west to east capacity, and that the east to west capacity will remain 500 MW.

PJM states that a copy of this filing has been served upon all parties in Docket Nos. ER04–375, ER04–521 and ER04–603.

Comment Date: April 20, 2004.

4. Tenaska Virginia Partners, L.P.

[Docket No. ER04–680–001]

Take notice that on April 9, 2004, Tenaska Virginia Partners, L.P., (Tenaska Virginia) submitted for filing, pursuant to section 205 of the Federal Power Act (16 U.S.C. 824d), and Part 35 of the Commission's regulations (18 CFR Part. 35), an amendment to its March 26, 2004 filing of its rate schedule for reactive power to be provided initially to the Virginia Electric and Power Company d/b/a Dominion Virginia Power (VEPCO) transmission system, and upon VEPCO and Tenaska Virginia joining the PJM Interconnection, L.L.C. (PJM), to the PJM transmission system. Tenaska Virginia requests an effective date of May 1, 2004.

Comment Date: April 19, 2004.

5. PJM Interconnection, L.L.C.

[Docket No. ER04–710–001]

Take notice that on April 9, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing a substitute executed interconnection service agreement (ISA) among PJM, PPL Susquehanna, L.L.C. and PPL Electric Utilities Corporation. PJM requests waiver of the Commission's notice requirements to allow a March 4, 2004 effective date for the substitute ISA.

PJM states that copies of this filing were served upon persons designated on the official service list compiled by the Secretary in this proceeding, the parties to the agreements, and the state regulatory commissions within the PJM region.

Comment Date: April 30, 2004.

6. Southern California Edison Company

[Docket No. ER04–724–000]

Take notice that on April 9, 2004, Southern California Edison Company (SCE), pursuant to section 35.13 of the Commission's Regulations under the Federal Power Act (18 CFR 35.13), tendered for filing the Interconnection Facilities Agreement (Interconnection Agreement) and the Service Agreement for Wholesale Distribution Service (Service Agreement) between SCE and FPL Energy Green Power Wind, LLC (FPLE Green Power). SCE requests the Interconnection Agreement and the Service Agreement become effective on April 10, 2004.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and FPLE Green Power.

Comment Date: April 30, 2004.

7. PECO Energy Company

[Docket No. ER04–726–000]

Take notice that on April 9, 2004, PECO Energy Company (PECO), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and Part 35 of the Rules and Regulations of the Commission, submitted for filing First Revised Sheet Nos. 64—68 Superceding Original Sheet Nos. 64—68 to the Interconnection Agreement between PECO and Exelon Generation Company (Exelon Generation) for the Limerick Generation Station designated as First Revised Rate Schedule FERC No. 131.

Comment Date: April 30, 2004.

8. Jersey Central Power and Light Company

[Docket No. ER04–727–000]

Take notice that on April 9, 2004, Jersey Central Power and Light Company, a FirstEnergy Company, (Jersey Central) pursuant to section 205 of the Federal Power Act and Part 35 of the Commission's regulations (18 CFR Part 35), submitted a revised Generation Facility Transmission Interconnection Agreement between Jersey Central and Ocean Peaking Power, L.P. (OPP). Jersey Central states that the revised Agreement has been designated First Revised Service Agreement No. 604 under the PJM Interconnection L.L.C.'s Open Access Transmission Tariff.

Jersey Central states that copies of this filing have been served on regulators in New Jersey, OPP and PJM.

Comment Date: April 30, 2004.

9. Boston Edison Company

[Docket No. ES04–20–000]

Take notice that on April 9, 2004, Boston Edison Company submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize the issuance of short-term debt securities in amount up to $450 million.

Comment Date: May 4, 2004.

10. Cambridge Electric Light Company

[Docket No. ES04–21–000]

Take notice that on April 9, 2004, Cambridge Electric Light Company submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize the issuance of short-term debt securities in amount up to $60 million.

Comment Date: May 4, 2004.

11. Commonwealth Electric Company

[Docket No. ES04–22–000]

Take notice that on April 9, 2004, Commonwealth Electric Company submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize the issuance of short-term debt securities in amount up to $125 million.

Comment Date: May 4, 2004.

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. E4–904 Filed 4–21–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–31–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Filings

April 15, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacific Gas and Electric Company, PG&E Corporation, On Behalf of Its Subsidiaries, Electric Generation LLC, ETrans LLC and GTrans LLC

[Docket Nos. EC02–31–000, EL02–36–000, and CP02–38–000]

Take notice that on April 13, 2004, Pacific Gas and Electric Company (PG&E) and PG&E Corporation, on behalf of its subsidiaries Electric Generation LLC, ETrans LLC and GTrans LLC hreby filed a Notice of Withdrawal stating that they want to withdraw the application previously filed in these dockets and to terminate the present proceedings.

Comment Date: May 4, 2004.

2. Calpine Energy Services Holdings, Inc., Utility Contract Funding II, LLC, Morgan Stanley Capital Group Inc.

[Docket No. EC04–94–000]

Take notice that on April 13, 2004, Calpine Energy Services Holdings, Inc., Utility Contract Funding II, LLC, and Morgan Stanley Capital Group Inc. tendered for filing a joint application under section 203 of the Federal Power

Act for approval of the disposition of jurisdictional facilities and acquisition of the security of a public utility in connection with the restructuring of certain existing power sales agreements.

Comment Date: May 4, 2004.

3. North American Electric Reliability Council

[Docket No. ER00–1666–000]

Take notice that on April 2, 2004, North American Electric Reliability Council (NERC) submitted for filing its intent to test a revision to its Transmission Line Loading Relief procedures on four Alliant West flowgates. NERC states that the test period will be from June 1, 2004 to September 30, 2004.

Comment Date: April 23, 2004.

4. West Penn Power Company

[Docket No. ER02–136–002]

Take notice that on January 7, 2002, West Penn Power Company, d/b/a Allegheny Power, filed an Addendum to its Electric Service Agreement with Allegheny Electric Cooperative with an effective date of December 19, 2001 in accordance with the Commission's Order issued in Docket No. ER02–123–000, 97 FERC ¶61,274.

Comment Date: April 26, 2004.

5. Pacific Gas and Electric Company, PG&E Corporation, on Behalf of Its Subsidiaries, Electric Generation LLC, ETrans LLC and GTrans LLC,

[Docket No. ES02–17–000]

Take notice that on April 13, 2004, Pacific Gas and Electric Company (PG&E) and PG&E Corporation, on behalf of its subsidiaries Electric Generation LLC, ETrans LLC and GTrans LLC hereby filed a Notice of Withdrawal, that they want to withdraw the application previously filed in these dockets and terminate the present proceedings.

Comment Date: May 4, 2004.

6. Golden Spread Electric Cooperative, Inc.

[Docket No. ES04–18–000]

Take notice that on April, 2, 2004, Golden Spread Electric Cooperative, Inc. (Golden Spread) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize: (1) An increase to Golden Spread's current authorization to issue securities in the form of short-term and intermediate-term debt from $160 to $240 million; (2) issuance of new long-term debt in an amount not to exceed $150 million and; (3) Golden Spread's entrance into a Continuing Guarantee of performance, in favor of AEP Texas Central Company, in connection with the assignment of Golden Spread to Oklaunion Electric Generating Cooperative, Inc. of its obligations under a Purchase and Sale Agreement.

Golden Spread also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: April 29, 2004.

7. Nevada Power Company

[Docket No. TX04–2–000]

Take notice that on April 12, 2004, Nevada Power Company (Nevada Power) filed with the Commission an application requesting that the Commission order it to provide transmission services pursuant to section 211 of the Federal Power Act (FPA). Nevada Power requests that the Commission order it to provide transmission services to all transmission customers identified in the application. Nevada Power states that this order is necessary to preserve the tax-exempt status of Nevada Power's local furnishing bonds. Nevada Power states that it agrees to waive its rights to a request for service under section 213(a) of the FPA and to the issuance of a proposed order under section 212(c) of the FPA.

Comment Date: April 27, 2004.

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. E4–905 Filed 4–21–04; 8:45 a.m.]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7652–4]

Science Advisory Board Staff Office; Environmental Economics Advisory Committee of the Science Advisory Board; Review of Upcoming Projects and Consultation on Mortality Risk Reduction Notification of a Public Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB) Staff Office is announcing a public meeting of the SAB's Environmental Economics Advisory Committee (EEAC). The EEAC will convene to review upcoming project requests and to offer a day long consultation on the methods for the valuation of mortality risk reduction.

DATES: May 12–13, 2004. The meeting will take place on Wednesday, May 12, 2004 from 12:30 p.m. until approximately 5 p.m. eastern time, and on Thursday, May 13, 2004 from 9 a.m. until approximately 4 p.m. eastern time.

MEETING LOCATION: The meeting will be held at the Science Advisory Board Conference Center located at 1025 F Street, NW., Suite 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this meeting may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9867, via e-mail at *stallworth.holly@epa.gov*, or by mail at U.S. EPA SAB (MC 1400F), 1200 Pennsylvania Ave., NW., Washington, DC, 20460. General information about the SAB can be found in the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background

EPA's National Center for Environmental Economics (NCEE) has requested the SAB conduct a consultation on ways to improve the metrics for the valuation of mortality risk reduction associated with EPA

actions. The valuation of mortality risk reduction is an integral part of the economic analyses performed by EPA as recognized in its Guidelines for Preparing Economic Analyses (2000). However, because economic research on valuing health risk reductions is rapidly evolving, new information and approaches have become available since the release of the Guidelines. EPA is in the process of revisiting current estimates and methods used for valuing health risk reductions and plans to revise the Guidelines accordingly. This task is part of EPA's commitment to evaluate and revise components of EPA's Guidelines for Preparing Economic Analyses (2000) and to consult with the SAB as it does so.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB EEAC will conduct the requested consultation and will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies, and will report to the chartered SAB.

The SAB's EEAC will conduct the consultation on May 13, 2004. A roster of EEAC members, their biosketches, and the meeting agenda will be posted on the SAB Web site at: *http://www.epa.gov/sab* prior to the meeting.

Availability of Meeting Materials

A copy of the draft agenda for the meeting that is the subject of this notice will be posted on the SAB Web site prior to the meeting. Other materials that may be made available for this meeting may also be posted on the SAB Web site in this time-frame.

Procedures for Providing Public Comments

It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB expects that public statements presented at the meeting will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Interested parties should contact the DFO in writing (e-mail, fax or mail—see contact information above) by close of business May 4, 2004 in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting, written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations

Individuals requiring special accommodation to access this meeting, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 16, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff.

[FR Doc. 04–9143 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0046; FRL–7353–8]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on 1,1,2-trichloroethane (1,1,2-TCE) (CAS No. 79–00–5). These data were submitted pursuant to an enforceable testing consent agreement (ECA)/Order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get 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 OPPT–2002–0046. 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 EPA's Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search,'' then key in the appropriate docket ID number.

II. Test Data Submissions

Under 40 CFR 790.60, all TSCA section 4 ECAs/Orders must contain a statement that results of testing conducted pursuant to ECAs/Orders will be announced to the public in accordance with section 4(d) of TSCA.

Test data for 1,1,2-TCE were submitted by the Hazardous Air Pollutant (HAP) Task Force and the Saphire Group™ (prepared for the HAP Task Force). These data were submitted pursuant to a TSCA section 4 ECA/Order and were received by EPA on January 21, 2004, and August 18, 2003. The submission includes the following final reports titled:

1. ''Route-to-Route Extrapolation of 1,1,2-TCE Studies, from the Oral Route to Inhalation Using Physiologically Based Pharmacokinetic Models; Carcinogenicity.''

2. ''Amended Report; Pharmacokinetics of 1,1,2-TCE in Rats and Mice.''

3. ''Physiologically Based Pharmacokinetic Model Development, Simulations, and Sensitivity Analysis for Repeated Exposure to 1,1,2-TCE.''

This chemical is used as an intermediate in the production of vinylidene chloride and some tetrachloroethanes. It is also used as a solvent, in adhesives and lacquers, in electronic components, and in the production of Teflon®.

EPA has initiated its review and evaluation process for this submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances, Toxic substances.

Dated: April 14, 2004.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of PollutionPrevention and Toxics.

[FR Doc. 04–9137 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7651–2]

Public Water Supply Supervision Program Revision for the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative approval and solicitation of request for a public hearing for Public Water Supply Supervision Program revision for the Commonwealth of Puerto Rico.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (EPA) has determined to approve an application by the Commonwealth of Puerto Rico to revise its Public Water Supply Supervision Primacy Program to incorporate regulations no less stringent than the EPA's National Primary Drinking Water Regulations (NPDWR) for the following: Public Notification Rule; Final Rule, promulgated by EPA on May 4, 2000 (65 FR 25982), two associated technical corrections to the Public Notification Rule; Final Rule; technical correction, promulgated by EPA June 21, 2000 (65 FR 38629) and Public Notification; Final Rule; technical correction, promulgated by EPA June 30, 2000 (65 FR 40520), and the Radionuclides; Final Rule, promulgated by EPA on December 7, 2000 (65 FR 76709). The application demonstrates that Puerto Rico has adopted drinking water regulations which satisfy the NPDWRs for the above. The USEPA has determined that Puerto Rico's regulations are no less stringent than the corresponding Federal Regulations and that Puerto Rico continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

DATES: This determination to approve the Commonwealth's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective May 24, 2004, unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on her own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the address shown below within thirty (30) days after the date of the **Federal Register** Notice. If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective thirty (30) days after publication of the **Federal Register** notice.

Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region 2, 290 Broadway, New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Puerto Rico Department of Health, Public Water Supply Supervision Program, 9th Floor—Suite 903, Nacional Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico, 00917

U.S. Environmental Protection Agency—Region 2, 24th Floor Drinking Water Section, 290 Broadway, New York, New York 10007–1866

FOR FURTHER INFORMATION CONTACT: Michael J. Lowy, Drinking Water Section, U.S. Environmental Protection Agency—Region 2, (212) 637–3830.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g–2, and 40 CFR 142.10, 142.12(d) and 142.13.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04–9044 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Public Law 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank.

Further, the committee shall make recommendations on how the Bank can facilitate grater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: Wednesday, May 5, 2004 at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: This meeting will focus on discussing the FY 2003 recommendations of the sub-Saharan Africa Advisory Committee and Ex-Im Bank management's response to the same; the bank's revised credit guidelines as they relate to the financing of used construction and agricultural equipment to higher risk markets; recent and upcoming business development initiatives including director and staff travel to Africa; as well as recent and upcoming events by Ex-Im Bank and others focused on expanding the U.S.-Africa commercial relationship.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 5, 2004, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3525 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

Peter Saba,

General Counsel

[FR Doc. 04–9151 Filed 4–21–04; 8:45 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Cedit Administration in McLean, Virginia, on April 20, 2004, from 11 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matter to be considered at the meeting is:

Closed Session*

- Consideration of resolution to address internal FCA staffing and organization during a specified period in Fiscal Year 2004.

Dated: April 19, 2004.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 04–9210 Filed 4–20–04; 8:51 am]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act; Meeting

DATE AND TIME: Tuesday, April 27, 2004 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, April 29, 2004 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 2004–08: American Sugar Cane League by counsel, Paul G. Borron, III.
Advisory Opinion 2004–10: Metro Networks Communications, Inc. by Tom Fanning, National Director of Marketing.
Legislative Recommendations for 2004.
Rev. Alfred C. Sharpton/Sharpton 2004 Continuing Entitlement to Public Funds.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Acting Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–9322 Filed 4–20–04; 2:52 am]

BILLING CODE 6715–01–M

* Session Closed-Exempt pursuant to 5 U.S.C 552b(c)(2).

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

North American Cargo Inc., 214–77 Jamaica Avenue, Queens Village, NY 11428. Officers: Jacob T. Puthenparambil, President (Qualifying Individual), Kurian Thomas, Secretary.

Crane Logistics Inc., 150–14 132nd Avenue, 2/F, Jamaica, NY 11434. Officer: Mae K. Tam, President, (Qualifying Individual).

Wanda Shipping Company, Ltd., 148–36 Guy R. Brewer Blvd., Suite 203, Jamaica, NY 11434. Officer: Weigang Yan, President (Qualifying Individual).

RMI Global Logistics, Inc., 755 South Clark Street, Suite 202 & 203, Chicago, IL 60605–1704. Officers: Richard Hatton, Vice President, (Qualifying Individual), Peter Scholten, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Transec International, Inc., 10306 NE 10th Street, Bellevue, WA 98004. Officers: Peter Neess, Secretary (Qualifying Individual), Robert T. Guinan, President.

Rojay World Freight, Inc., One Industrial Plaza, Bldg. B, Valley Stream, NY 11581. Officers: Anthony Zafferese, Secretary, Patricia Kelly, Vice President (Qualifying Individuals), Roy Magee, Managing Director.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Technology Ventures Incorporated, 25200 Malvina, Warren, MI 48089. Officers: Bradford J. Pulleyblank, Logistics Specialist (Qualifying Individual), Constance E. Blair, President.

Earthlink Cargo And Customs Service, 3915 W. 102nd Street, #204, Inglewood, CA 90303. Pete Pang, Sole Proprietor.

Intercorp Forwarders, Ltd., 250 Eighth Avenue, Apt. #2, Sea Cliff, Long Island, NY 11579. Officers: Robert Stettner, President (Qualifying Individual).

Dated: April 16, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–9083 Filed 4–21–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 6, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Salvador Lawrence Diesi, Sr., Elaine Diesi Ardoin, Joseph William Diesi, Joseph Charles Diesi, Sr., Samuel Charles Diesi, Joseph Charles Diesi, Jr., and Linda Diesi Cornette, all of Opelousas, Louisiana, Frank James Diesi, II, and Thomas Robert Diesi, both of Breaux Bridge, Louisiana, and Salvador Lawrence Diesi, Jr., Lafayette, Louisiana; to acquire additional voting shares of American Bancorp, Inc., Opelousas, Louisiana, and thereby indirectly acquire voting shares of American Bank and Trust Company, Opelousas, Louisiana.

Board of Governors of the Federal Reserve System, April 16, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–9100 Filed 4–21–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. North Fork Bancorporation, Inc., Melville, New York; to merge with GreenPoint Financial Corp., and thereby indirectly acquire GreenPoint Bank, both of New York, New York.

In connection with this application, Applicant also has applied to acquire GreenPoint Community Development Corp., New York, New York, and thereby engage in community development activities, pursuant to section 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, April 16, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–9101 Filed 4–21–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Contact Lens Study

AGENCY: Federal Trade Commission.

ACTION: Notice and request for public comment.

SUMMARY: In the Fairness to Contact Lens Consumers Act ("the Act''), 15 U.S.C. 7601 *et seq.*, which provides for the availability of contact lens prescriptions to patients and the verification of contact lens prescriptions by prescribers, Congress required the Federal Trade Commission (the "Commission'' or "FTC'') to conduct a study ("Contact Lens Study'' or the "Study'') of the strength of competition in the sale of prescription contact lenses. In connection with preparation of the Study, the Commission is requesting public comment on several relevant issues.

DATES: Public comments must be received on or before June 24, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Contact Lens Study, Project No. V040010,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159 (Annex L), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material)

should be sent to the following e-mail box: *contactlensstudy@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Maureen Ohlhausen or James Cooper, Federal Trade Commission, Office of Policy Planning, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: 202–326–2632 (Maureen Ohlhausen) or 202–326–3367 (James Cooper); e-mail: *JC_contactlensstudy@ftc.gov or MO_contactlensstudy@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 2003, President Bush signed the Fairness to Contact Lens Consumers Act ("the Act'').[1] Among other things, the Act requires that prescribers—such as optometrists and ophthalmologists—provide contact lens prescriptions to their patients upon the completion of a contact lens fitting.[2] The Act also mandates that prescribers verify contact lens prescriptions to third-party contact lens sellers who are authorized by consumers to seek such verification.[3] The Act directs the Commission to prescribe implementing rules.[4]

The Act also directs the Commission to conduct a study to examine the strength of competition in the sale of prescription contact lenses, including an examination of several specified issues.[5] The Commission today solicits public comments on these issues, as set forth in section II below.

[1] 15 U.S.C. 7601 *et seq.*; Pub. L. 108–164.

[2] *Id.* at 7601.

[3] *Id.* at 7061, 7603.

[4] *Id.* at 7607.

[5] *Id.* at 7609.

II. Request for Public Comments

In the Act, Congress directed the Commission to undertake a study examining the following issues related to the strength of competition in the sale of prescription contact lenses: (1) The incidence of exclusive relationships between prescribers or sellers and contact lens manufacturers and the impact of such relationships on competition; (2) The difference between online and offline sellers of contact lenses, including price, access, and availability; (3) The incidence, if any, of contact lens prescriptions that specify brand name or custom labeled contact lenses, the reasons for the incidence, and the effect on consumers and competition; (4) The impact of the Federal Trade Commission Eyeglass Rule (16 CFR Part 456 *et seq.*) on competition, the nature of enforcement of the rule, and how such enforcement has impacted competition; and (5) Any other issue that has an impact on competition in the sale of prescription contact lenses.[6]

In connection with the Contact Lens Study, the Commission particularly is interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please submit any relevant data, statistics, or any other evidence upon which those comments are based.

With regard to the following questions: (1) Prescribers include eye care practitioners (*i.e.*, ophthalmologists, optometrists, or other persons permitted under state law to issue prescriptions for contact lenses) that sell contact lenses, as well as optical chains and other retailers that offer eye care practitioner services and sell contact lenses; (2) sellers include bricks-and-mortar retailers, as well as mail order and Internet firms that sell contact lenses, but do not offer any eye care practitioner services.

Exclusive Relationships

1. Please comment on the incidence of exclusive manufacturer-prescriber and manufacturer-seller relationships: (a) How common is it for a contact lens manufacturer to sell only to prescribers, to the exclusion of sellers? (b) How common is it for a contact lens manufacturer to sell only to sellers, to the exclusion of prescribers? (c) If a contact lens manufacturer sells only to prescribers or sellers, what type of limitations and restrictions on re-sale typically are found in such agreements? (d) How common is it for prescribers to agree to prescribe only certain manufacturers' contact lenses? (e) Do the manufacturers that are parties to agreements in question (d) restrict the sales they make to sellers and prescribers that are not parties to the type of agreements in (d)?

2. Please comment on whether contact lens prescribers advertise their willingness to provide prescriptions for contact lenses available from competing prescribers and sellers: (a) How prevalent is prescriber advertisement of willingness to prescribe contact lenses available through other prescribers and sellers? (b) How prevalent is consumer awareness of prescribers' willingness to prescribe contact lenses available from alternative prescribers and sellers? (c) Are consumers able to shop for prescribers that will prescribe contact lenses available from alternative prescribers and sellers? (d) What role do state regulatory or self-regulatory bodies play in controlling prescriber advertisements, especially with respect to a prescriber's willingness to prescribe contact lenses that are available from alternative prescribers and sellers? (e) Do manufacturers advertise directly to consumers that their contact lenses are available both from sellers and prescribers? (f) Do sellers advertise that lenses may be purchased from sellers that are not prescribers?

3. Are there instances where exclusive relationships have prevented market entry by a manufacturer, seller, or prescriber?

4. Please comment on the market shares of prescribers, sellers, and manufacturers: (a) What are the national and local market shares of contact lens manufacturers? (b) What are the national and local market shares of sellers? (c) What are the local market shares of contact lens sales by prescribers? (d) Are there instances where a specific prescriber (including different eye care practitioners associated with the same chain or retailer) issues a substantial share of contact lens prescriptions at a local level?

5. Please comment on the benefits, if any, associated with exclusive manufacturer-prescriber and manufacturer-seller relationships: (a) To what extent do exclusive relationships lower costs for manufacturers and/or for sellers and prescribers, and to what extent are these cost savings passed on to consumers? (b) What role do exclusive relationships play in assuring

[6] *Id.*

that sellers or prescribers give a manufacturer's contact lenses the desired level of promotion? (c) What role do exclusive relationships play in assuring that sellers or prescribers provide customers with the level of service that manufacturers desire to accompany their contact lenses? (d) What role do exclusive relationships play in discouraging sellers and prescribers from "free-riding'' off the promotional or customer service efforts provided by other sellers or prescribers?

6. Please comment on how, if at all, current patterns of exclusive relationships may change in response to the Act.

7. Please provide any other information regarding the impact of the exclusive relationships on competition.

Online and Offline Sellers

8. Are there differences in the prices charged for similar contacts lenses by online and offline merchants?

9. Are there any cost advantages associated with selling contact lenses online versus offline?

10. Please comment whether consumers find it more convenient to purchase contact lenses online or offline: (a) Do consumers save time by purchasing their contacts online rather than at an offline store, or vice-versa? (b) What is the value consumers place on any time savings? (c) Do consumers find greater lens availability online or offline? (d) Irrespective of any time savings, do consumers find it more convenient to purchase contact lenses online rather than at an offline store, or vice-versa? (e) Do consumers who purchase contact lenses from online sellers differ from consumers who purchase from bricks-and-mortar sellers and prescribers with regard to income, education, geographic location, or any other attribute? (f) What is the cost to consumers of home delivery of contact lenses?

11. Do consumers who purchase contact lenses from offline sellers have any differing concerns with regard to the quality of the lenses they receive from those who purchase contact lenses online?

12. Please comment on the extent to which online and offline contact lens sellers compete: (a) To what extent are offline contact lens sellers' pricing decisions affected by prices offered by online sellers? (b) To what extent are online contact lens sellers' pricing decisions affected by prices offered by offline sellers? (c) To what extent do prices charged for identical contact lenses vary among online sellers, and is the variance any greater or smaller than that found between prices offered by offline sellers? (d) Are some online sellers perceived by customers as preferable to other online sellers in terms of customer service, ease of shopping, trustworthiness, or any other non-price characteristic? (e) Are some offline sellers perceived by customers as preferable to other offline sellers in terms of customer service, ease of shopping, trustworthiness, or any other non-price characteristic? (f) Do contact lens manufacturers charge different prices to online and offline sellers? (g) If there are differences in the prices manufacturers charge to online and offline sellers, to what extent do they reflect differences in the cost of serving online and offline sellers, and/or different levels of customer service and promotion provided by online and offline sellers?

13. Please provide any other information regarding the difference between online and offline sellers of contact lenses.

Prescriptions That Specify Brand Name or Custom Labeling

14. Please comment on the incidence of brand name and custom label contact lens prescriptions: (a) What is the incidence of contact lens prescriptions that specify a brand name? (b) What is the incidence of contact lens prescriptions for custom labeled contact lenses? (c) Is the incidence of the prescribing practices in (a) and/or (b) increasing or decreasing? (d) Please comment on how, if at all, current patterns of prescriptions requiring brand name or custom-labeled contact lenses may change in response to the Act.

15. What are the benefits of contact lens prescriptions that specify a brand name or custom labeled contact lenses? What are the costs of contact lens prescriptions that specify a brand name or custom labeled contact lenses?

16. What role do state laws or regulations play in determining what a prescriber must include on a prescription, including whether a prescription must contain a brand name?

17. What is the incidence of brand name or custom labeled contact lenses being available only through the prescriber?

18. How prevalent is consumer awareness that a prescriber may prescribe custom labeled or brand name lenses that are available only from the prescriber?

19. Please comment on whether contact lens prescribers advertise their ability to prescribe custom labeled lenses or their willingness to prescribe contact lenses available from a variety of sellers: (a) How prevalent are prescriber advertisements that they prescribe custom labeled lenses or advertisements that they prescribe contact lenses available from a variety of sellers? (b) Are consumers able to shop for prescribers based on whether they prescribe custom labeled contact lenses or contact lenses available from a variety of sellers? (c) What role do state regulatory or self-regulatory bodies play in controlling prescriber advertisements with respect to their ability to prescribe custom labeled lenses or their willingness to prescribe contact lenses available from a variety of sellers?

20. Please provide any other information regarding the impact on competition of prescriptions that specify brand name or custom labeled contact lenses.

Impact of the FTC Eyeglass Rule on Competition

21. Describe the state of competition in the market for the retail sale of prescription eyeglasses at the time that the Commission issued the Eyeglass Rule in 1978, including, but not limited to, a description of the products included in the market, the market's geographic scope (*e.g.*, national, regional, local), the market shares of firms, and any barriers to entry.

22. Referring to the factors listed in question 21, describe how competition in the market for the retail sales of prescription eyeglasses has changed since the Commission issued the Eyeglass Rule in 1978.

23. To what extent are the differences in competition in the market for the retail sale of prescription eyeglasses since 1978 attributable to the following factors: (a) Changes in federal law, including the issuance and enforcement of the Eyeglass Rule; (b) changes in state law; (c) changes in industry standards or trade association rules or policies; (d) changes in technology; or (e) other changes in the marketplace?

24. To the extent that the changes in competition in the market for the retail sale of prescription eyeglasses since 1978 are attributable to the issuance and enforcement of the Eyeglass Rule, identify the specific Rule provisions that have affected competition, how those provisions have affected competition, and the extent of the effect on competition.

25. Has the issuance and enforcement of the Eyeglass Rule affected prices in the market for the retail sale of prescription eyeglasses? If so, how and to what extent?

26. Has the issuance and enforcement of the Eyeglass Rule caused or prompted states to change their laws or policies regarding prescription eyeglasses? If so,

what changes were made and what effect did they have?

27. Has the issuance and enforcement of the Eyeglass Rule caused or prompted private entities (*e.g.*, trade associations) to change their rules or policies relating to prescription eyeglasses? If so, what changes were made and what effect did they have?

28. Please provide any other information regarding the impact on competition of the Eyeglass Rule.

Other Issues Related to Competition in the Sale of Prescription Contact Lenses

29. Do state licensing requirements affect out-of-state sellers' abilities to compete with in-state sellers or prescribers for the sale of prescription contact lenses?

30. What role do state licensing requirements applicable to sellers of contact lenses play in protecting consumers?

31. Please provide any other information regarding issues that affect competition in the sale of prescription contact lenses.

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be submitted on or before June 24, 2004. Comments should refer to "Contact Lens Study, Project No. V040010,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex L), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential.''[7] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *contactlensstudy@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–9156 Filed 4–21–04; 8:45 am]

BILLING CODE 6750–01–P

[7] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Medicare Program; Technical Review Panel on the Medicare Trustees Reports; Extension of Deadline for Nominations for Members

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice.

SUMMARY: This notice extends the deadline for nominations for members of the panel. The original deadline was April 9, 2004. The Medicare Board of Trustees has requested the Secretary of Health and Human Services (who is one of the Trustees) to establish a panel of technical experts to review the assumptions and methods underlying the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Fund annual reports.

EFFECTIVE DATE: Nominations for members will be considered if we receive them at the appropriate address, as provided below, before 5 p.m. on April 30, 2004.

ADDRESSES: Mail or deliver written nominations to the following address: Hubert H. Humphrey Building, Room 443–F.8, 200 Independence Avenue, SW., Washington, DC 20201. Documents may be e-mailed to *andrew.cosgrove@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Cosgrove, (202) 205–8681.

SUPPLEMENTARY INFORMATION:

I. Background

The Board of Trustees of the Medicare Trust Funds (the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Funds) report annually on the financial condition of the trust funds. The reports describe the trust funds' current and projected financial condition, within the next 10 years (the "short term'') and indefinitely into the future (the "long term''). The Medicare Board of Trustees has requested the Secretary of Health and Human Services (who is one of the Trustees) to establish a panel of technical experts to review the assumptions and methods underlying the HI and SMI annual reports. The panel will consist of up to 7 members, selected by the Secretary or a designee, and a Chair, who is appointed by the Secretary or a designee.

The panel will meet periodically throughout its existence, until it has completed its work. The work of the panel is technical in nature and will concentrate on the long term financing of the Medicare program. We will prepare the agenda for the panel's activities, which will set the items for discussion.

We are requesting nominations for members to serve on the panel. Panel members serve with compensation, and travel, meals, lodging, and related expenses will be reimbursed in accordance with standard government travel regulations. We have a special interest in ensuring that women, minorities, and the physically challenged are adequately represented on the panel and encourage nominations of qualified candidates from those groups.

II. Provisions of This Notice

A. Criteria for Nominees

Nominees should possess knowledge, experience, and expertise in areas such as the Medicare program, health economics, and actuarial science, or any other relevant expertise.

It is not necessary that any nominee possess expertise in all of the areas listed, but each should have significant, relevant experience in at least one area. Members of the panel will serve for the entire duration of the panel.

Any interested person may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include a letter of nomination, a curriculum vita of the nominee, and a statement from the nominee that the nominee is willing to serve on the panel.

B. Signing of the Charter

The charter for the Technical Review Panel on the Medicare Trustees Reports was signed by the Secretary on March 11, 2004. The charter will terminate on March 11, 2006, unless renewed by the Secretary.

III. Copies of the Charter

You may obtain a copy of the Secretary's charter for the Technical Review Panel on Medicare Trustees Reports by submitting a request to Andrew Cosgrove, 200 Independence Ave., SW., Washington DC, 20201, (202) 205–8681 or contact Andrew Cosgrove via e-mail at *andrew.cosgrove@hhs.gov.*

Authority: 42 U.S.C. 217a; section 222 of the Public Health Services Act, as amended.

Michael J. O'Grady,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–9176 Filed 4–21–04; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04107]

Research Study To Assess the Risk of Blood Borne Transmission of Classic or Variant Creutzfeldt-Jakob Disease; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to continue an active, nationwide study begun in 1995 of recipients of blood products from primarily classic or possibly variant CJD. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the American Red Cross (ARC). The ARC, because of its earlier participation in the CJD Investigational Lookback Study, has unique possession of the personal identifiers of at least 95 living recipients of blood components from reported donors who subsequently developed CJD. The ARC is the only organization that has the complete relevant information on 237 such recipients who are now deceased.

In addition, the ARC has the personal identifiers on at least 25 donor cases of CJD for which recipient reports have been collected. It is this existing data that are critical to the strength of the statistical power and success of this project.

Further, the ARC is the only organization that has the professional affiliations already in place that will permit reasonable generalizations of the findings of this study to the entire nation.

C. Funding

Approximately $80,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before May 30, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Mary Lerchen, Extramural Program Official, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333.

Dated: April 15, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9107 Filed 4–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

A Public Health Action Plan To Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance.

Name: A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report.

Time and Date: 1:30 p.m.–5 p.m., June 30, 2004.

Place: Hyatt Regency Bethesda, Waterford/Lalique Suite, One Bethesda Metro Center, 7400 Wisconsin Avenue at Old Georgetown Road, Bethesda, Maryland, 20814; telephone: 1–301–657–1234; Fax: 1–301–657–6453.

Status: Open to the public, limited only by the space available.

Purpose: To present the third annual report of progress by Federal agencies in accomplishing activities outlined in A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues), and solicit comments from the public regarding the annual report. The Action Plan serves as a blueprint for activities of Federal agencies to address antimicrobial resistance. The focus of the plan is on domestic issues.

Matters to be Discussed: The agenda will consist of welcome, introductory comments, followed by discussion of four focus areas in sequential plenary sessions lasting up to 45 minutes each. The four focus areas are: Surveillance, Prevention and Control, Research, and Product Development. Session leaders will give a 10 to 15 minute overview at the beginning of each session, then open the meeting for general discussion.

Comments and suggestions from the public for Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsements of specific commercial products.

The Action Plan, Annual Report, and meeting agenda will be available at *http://www.cdc.gov/drugresistance.* The public meeting is sponsored by the CDC, FDA, and NIH, in collaboration with seven other Federal agencies and departments involved in developing and writing A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues).

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral questions, comments, and suggestions from the public. Depending on the number wishing to comment, a time limit of three minutes may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted to the Task Force. Written comments and suggestions from the public are encouraged and can be submitted at the meeting or should be received by the contact person by regular mail or email listed below no later than July 31, 2004.

Persons anticipating attending the meeting are requested to send written notification to the contact person below by June 18, 2004, including name, organization (if applicable), address, phone, fax, and e-mail address.

For Further Information Contact: Ms. Vickie Garrett, Antimicrobial Resistance, Office of the Director, NCID, CDC, mail stop C–12, 1600 Clifton Road, NE, Atlanta, Georgia 30333; telephone 404–639–2603; fax 404–639–4197; or e-mail *aractionplan@cdc.gov.*

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

CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 15, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9103 Filed 4–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: OCSE–157 Child Support Enforcement Program Annual Data Report.

OMB No.: 0970–0177.

Description: The information obtained from this form will be used to report Child Support Enforcement activities to the Congress as required by law, to complete incentive measures and performance indicators utilized in the program, and to assist the Office of Child Support Enforcement in monitoring and evaluating State Child Support programs.

Respondents: State, local or tribal governments.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–157	54	1	4.0	216.0

Estimated Total Annual Burden Hours: 216.0.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives if within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *katherine_t._astrich@omb.eop.gov.*

Dated: April 18, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–9084 Filed 4–21–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonprescription Drugs Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Nonprescription Drugs Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of March 30, 2004 (69 FR 16582). The amendment is being made to reflect changes in the introductory paragraph and in the following portions of the document: *Date and Time*, *Location*, *Agenda*, and *Procedure*; and to add a portion entitled "*Closed Committee Deliberations*.'' There are no other changes.

FOR FURTHER INFORMATION CONTACT: Dornette Spell-LeSane or Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, e-mail *topperk@cder.fda.gov* or *spelllesaned@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington DC area), codes 3014512541 or 3014512534. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 30, 2004, FDA announced that a meeting of the Nonprescription Drugs Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee would be held on May 6 and May 7, 2004. On page 16582, in the first and second columns, the introductory paragraph, *Date and Time*, *Location*, *Agenda*, and *Procedure* portions of the meeting notice are amended; and a portion entitled "*Closed Committee Deliberations*'' is added to read as follows:

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Date and Time: The meeting will be held on May 6, 2004, from 8 a.m. to 5:30 p.m. and May 7, 2004, from 8 a.m. to 3:30 p.m.

Location: On May 6, 2004, from 8 a.m. to 5:30 p.m. and May 7, 2004, from 8 a.m. to 11 a.m., the committee will meet at the Center for Drug Evaluation and Research Advisory Committee Conference Room (rm. 1066), 5630 Fishers Lane, Rockville, MD. On May 7, 2004, from 11 a.m. to 3:30 p.m., the two committees will meet separately at two locations. The Nonprescription Drugs Advisory Committee will remain at the previously listed location for its separate meeting. The Dermatologic and Ophthalmic Drugs Advisory Committee will meet at the Food and Drug Administration, Parklawn Building, Chesapeake Conference Room, third floor, 5600 Fishers Lane, Rockville, MD for its separate meeting.

Agenda: On May 6, 2004, from 8 a.m. to 5:30 p.m. and May 7, 2004, from 8 a.m. to 11 a.m., the committee will discuss efficacy and labeling issues for over-the-counter drug products used in the treatment of tinea pedis (interdigital)

in patients 12 years of age and over. On May 7, 2004, from 11 a.m. to 12 noon, each separate committee meeting will be open to the public, unless public participation does not last that long. From 12 noon to 3:30 p.m., each separate committee meeting will be closed to permit discussion and review of trade secret and/or confidential information.

Procedure: Interested persons may present data, information or views orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 23, 2004. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on May 6, 2004. On May 7, 2004, oral presentations from the public will be scheduled for each separate committee between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 23, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentations.

Closed Committee Deliberations: On May 7, 2004, from 12 noon to 3:30 p.m., the committee meetings will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b (c)(4)).

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 15, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–9070 Filed 4–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004–N–0181]

Critical Path Initiative; Establishment of Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to obtain input on activities that could reduce existing hurdles in medical product design and development. As described in a recently released Report, "Innovation/Stagnation: Challenge and Opportunity on the Critical Path to New Medical Products,'' there is an urgent need to modernize the product development toolkit, to make the development process more predictable and less costly. FDA is seeking input in identifying and prioritizing the most pressing medical product development problems, and the areas that provide the greatest opportunities for rapid improvement and public health benefits. To this end, we are establishing this open docket to obtain input from industry, patients, academics investors, and all interested parties.

DATES: Submit written or electronic comments through July 30, 2004.

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

FOR FURTHER INFORMATION CONTACT: Lisa Rovin, Office of the Commissioner (HFP–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857–0001, 301–827–1443.

SUPPLEMENTARY INFORMATION:

I. Background

On March 16, 2004, FDA released a report, "Innovation/Stagnation: Challenge and Opportunity on the Critical Path to New Medical Products.'' (The full report is available at *http://www.fda.gov/oc/initiatives/criticalpath/whitepaper.pdf*.) The report notes the recent slowdown in new medical products submitted for approval to FDA, and describes ways in which the product development process, the "critical path,'' could be modernized to make product development more predictable and less costly. According to Acting FDA Commissioner Lester Crawford, "A new focus on updating the tools currently used to assess the safety and efficacy of new medical products will very likely bring tremendous public health benefits.''

Recent investments in basic medical research and translational research are intended to promote scientific discoveries and move some of them into medical testing. At that point, however, a potential medical product's journey from concept to commercialization is far from complete. To produce a commercial medical product, developers must successfully negotiate a "critical path'' to ascertain whether the potential drug, device, or biologic is effective and sufficiently safe for use, and how it can be safely and reliably manufactured. Each of the three dimensions of the critical path—assessment of safety testing, proof of efficacy, and industrialization—presents its own set of scientific and technologic challenges, often unrelated to the science behind the mechanism of action of the product.

- The ethics of human testing required that there be a reasonable assurance of safety before people are exposed in clinical trials. The tools used to predict preclinical safety (e.g., animal toxicology) are time consuming and cumbersome. In some cases, particularly for assessment of products based on recent innovative science, entirely new tools must be developed. There is an urgent need for new biomarkers for evaluating safety during human trials.
- Demonstrating the medical effectiveness of a product is one of the most difficult challenges in product development. Even identifying the best way to assess whether a product is effective (what symptoms or physiologic indicators should be followed, and for how long) can present significant unknowns.
- Product development companies must figure out how to manufacture large amounts of the product reliably. Turning a laboratory prototype into a mass-produced medical product requires solutions to problems in physical design, characterization, manufacturing scaleup and quality control. These problems can be rate-limiting for new technologies, which are frequently more complex than traditional products.

Because of its unique vantage point, FDA can work with outside experts in companies and the academic community to coordinate, develop, and/or disseminate solutions to critical path problems, to improve the efficiency of product development industrywide.

The first step is to identify and prioritize the most pressing medical product development problems, and the areas that provide the greatest opportunities for rapid improvement and public health benefits. It is critical that we enlist all relevant stakeholders in this effort. Such a national "Critical Path Opportunities List'' is intended to bring concrete focus to tasks (whether best undertaken by industry, academia, FDA, by others, or jointly) that can modernize the critical path.

For additional information, you may visit FDA's critical path home page at *www.fda.gov/oc/initiatives/criticalpath*.

II. Request for Comments

We are seeking input on identification of the most pressing scientific and/or technical hurdles causing major delays and other problems in the drug, device, and/or biologic development process, as well as proposed approaches to their solution. For each critical path hurdle, we are particularly interested in receiving the following information. Please note that all material submitted to this docket will be publicly available.

1. Hurdle Identification. Please describe the product development issue, the nature of the evaluation tool that is out-of-date or absent, how this problem hinders product development, and how a solution would improve the product development process. Please be as specific as possible.

2. Please rank each hurdle identified in Question 1, above, in priority order according to which hurdles create the most severe product development problems. That is, which problems present the greatest opportunity for improving product development processes? Our goal is to identify those aspects of product development that would most benefit from new evaluation tools.

3. For each problem identified, please indicate the type of drug, biologic, or device to which the hurdle applies.

4. For each problem identified, if a solution would facilitate the development of drugs, biologics, and/or devices for a particular disease or categories of disease, please indicate which diseases would be affected?

5. Nature of the Solution. For each problem identified, please describe the evaluation tool that would solve the problem and the work necessary to create and implement the tool/solution. For example, would a solution come from scientific research to develop a new assay or validate a new endpoint? If the solution involves biomedical research, please specify the necessary research project or program. Would a tool be developed through data mining or computer modeling? Would the right tool be a new FDA guidance or industry standard? If work on a solution is underway, what steps remain? Are there other innovative solutions that could be explored?

6. For each solution identified, please indicate which could be accomplished quickly, in less than 24 months, and which require a long-term approach?

7. For each problem identified, what role should FDA play and what role should be played by others? Should FDA play a convening role, bringing the relevant parties together to discuss an approach or solution? If so, who else should participate? Should FDA coordinate scientific research, the results of which would be publicly available? We are seeking input on ways to target FDA scientific and collaborative activities to help industry bring more safe and effective medical products to us for review.

8. What factors should guide FDA in setting priorities among the hurdles and solutions identified?

III. Submission of Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. You can also view received comments on the Internet at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm*.

Dated: April 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–9147 Filed 4–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection: Request for Public Comment: 30-Day Notice

AGENCY: Indian Health Service, HHS.

ACTION: Request for public comment: 30-day proposed collection; Hoz'ho'nii: An Intervention to Increase Breast and Cervical Cancer Screening Among Navajo Women.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (66 FR 66912) on February 9, 2004 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection

Title: Hoz'ho'nii: An Intervention to Increase Breast and Cervical Cancer Screening Among Navajo Women.

Type of Information Collection Request: Previously Approved Collection.

Form Number: None.

Need and Use of the Information Collection: The information is needed to evaluate a culturally appropriate educational outreach program designed to increase breast and cervical cancer screening among Navajo women ages 20 and older. The purpose is to identify barriers that may prevent Navajo women from participating in breast and cervical cancer screening by comparing changes in knowledge, attitudes, and behaviors of three study groups; educational outreach only, education outreach plus chapter-based clinic, and a control group. Results will be used to assess the impact of the educational outreach program, improve breast and cervical cancer screening, and to guide the IHS and Tribal health programs in the delivery of culturally appropriate intervention to reduce mortality rates from breast and cervical cancer among Navajo women.

Affected Public: Individuals.

Type of Respondents: Individuals.

Table below provides the estimated burden response for this information collection:

ESTIMATED BURDEN RESPONSE TABLE

Data collection instrument	Estimated No. of respondents	Responses per respondent	Average burden hour per response*	Total annual burden hours
KAB Pretest	450	1	0.42 hr (25 minutes)	188.0
KAB Post test	450	1	0.42 hr (25 minutes)	188.0
Interviews	30	1	0.25 hr (15 minutes)	8.0

ESTIMATED BURDEN RESPONSE TABLE—Continued

Data collection instrument	Estimated No. of respondents	Responses per respondent	Average burden hour per response*	Total annual burden hours
Total	930	1		384.0

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this information collection.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection plan(s) and/or instruction(s), contact: Ms. Christina Ingersoll, IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601, or call non-toll free (301) 443–5938, or send via facsimile to (301) 443–2613, or send your E-mail requests, comments, and return address to: *cingerso@hqe.ihs.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: April 2, 2004.

Eugenia Tyner-Dawson,

Acting Deputy Director, Indian Health Service.

[FR Doc. 04–9155 Filed 4–21–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Participant Feedback on Training Under the Cooperative Agreement for Mental Health Care Provider Education in HIV/AIDS Program IV

(OMB No. 0930–0195; Extension, no change)—The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) intends to continue to conduct a multi-site assessment for the Mental Health Care Provider Education in HIV/AIDS Program IV. The education programs funded under this cooperative agreement are designed to disseminate knowledge of the psychological and neuropsychiatric sequelae of HIV/AIDS to both traditional (*e.g.,* psychiatrists, psychologists, nurses, primary care physicians, medical students, and social workers) and non-traditional (*e.g.*, clergy, and alternative health care workers) first-line providers of mental health services, in particular to providers in minority communities.

The multi-site assessment is designed to assess the effectiveness of particular training curricula, document the integrity of training delivery formats, and assess the effectiveness of the various training delivery formats. Analyses will assist CMHS in documenting the numbers and types of traditional and non-traditional mental health providers accessing training; the content, nature and types of training participants receive; and the extent to which trainees experience knowledge, skill and attitude gains/changes as a result of training attendance. The multi-site data collection design uses a two-tiered data collection and analytic strategy to collect information on (1) the organization and delivery of training, and (2) the impact of training on participants' knowledge, skills and abilities.

Information about the organization and delivery of training will be collected from trainers and staff who are funded by these cooperative agreements/contracts, hence there is no respondent burden. All training participants will be asked to complete a brief feedback form at the end of the training session. CMHS anticipates funding 10 education sites for the Mental Health Care Provider Education in HIV/AIDS Program. The annual burden estimates for this activity are shown below:

Form	Responses per respondent	Estimated number of respondents (× 10 sites)	Hours per response	Total hours
All Sessions				
Session Report Form	1	60 × 10 = 600	0.080	48
Training Sessions				
General Participant Feedback Form	1	500 × 10 = 5000	0.167	835
Neuropsychiatric Participant Feedback Form	1	160 × 10 = 1600	0.167	267
Non Physician Neuropsychiatric Participant Feedback Form	1	240 × 10 = 2400	0.167	401
Adherence Participant Feedback Form	1	100 × 10 = 1000	0.167	167
Ethics Participant Feedback Form	1	200 × 10 = 2000	0.167	125
Monthly Form Submission				
Monthly Form Mailing	12 per site	12 × 10 = 120	0.167	20
Total		7,504		1,733

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received by June 21, 2004.

Dated: April 16, 2004.

Patricia S. Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–9118 Filed 4–21–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Request for Applications for Grants for National Technical Assistance Centers on Consumer/Peer-Run Programs (Consumer TA Centers)

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of request for applications for grants for National Technical Assistance Centers on Consumer/Peer-Run Programs (Consumer TA Centers).

Authority: Section 520A of the Public Health Service Act.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), is accepting applications for Fiscal Year 2004 grants to assist in the transformation of the mental health system by providing consumers with necessary skills to foster consumer/peer-run programs. These programs maximize consumer self-determination and recovery and assist people with severe mental illness to decrease their dependence on expensive social services and avoid psychiatric hospitalization.

DATES: Applications are due on June 25, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on program issues contact: Risa S. Fox, M.S., SAMHSA/CMHS, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857, Phone: (301) 443–3653; E-mail: *rfox@samhsa.gov*.

For questions on grants management issues contact: Gwendolyn Simpson, SAMHSA/Division of Grants Management, 5600 Fishers Lane, Room 13–103, Rockville, MD 20857, Phone: (301) 443–4456; E-mail: *gsimpson@samhsa.gov.*

SUPPLEMENTARY INFORMATION:

Grants for National Technical Assistance Centers on Consumer/Peer-Run Programs (SM 04–011) (Initial Announcement)

Catalogue of Federal Domestic Assistance (CFDA) No.: CFDA No.93.243.

KEY DATES

Application Deadline	Applications are due by June 25, 2004.
Intergovernmental Review (E.O. 12372)	Letters from State Single Point of Contact (SPOC) are due no later than August 24, 2004.
Public Health System Impact Statement (PHSIS)/SSA Coordination.	Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due no later than 60 days after application deadline.

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I. Funding Opportunity Description

1. Introduction

As authorized under Section 520A of the Public Health Service Act, the Substance Abuse Mental Health Services Administration (SAMHSA) announces the availability of funds for National Technical Assistance Centers on Consumer/Peer-Run Programs (Consumer/Peer-Run TACs) grants. The Consumer/Peer-Run TACs will assist in the transformation of the mental health system by providing consumers with necessary skills to foster consumer/peer-run programs. These programs maximize consumer self-determination and recovery and assist people with severe mental illness to decrease their dependence on expensive social services and avoid psychiatric hospitalization.

2. Expectations

2.1 Background

The Consumer/Peer-Run TACs support the work of SAMHSA's Center for Mental Health Services (CMHS) to transform the mental health system through changes that help adults with severe mental illnesses recover and live independently and productively in the community. CMHS fosters consumer involvement in the planning, delivery, and evaluation of mental health services and recognizes the role of self-help, mutual support, and empowerment in the recovery of persons with a severe mental illness. In 1992, to further the development of self-help programs, Federal funding was used to support the first national self-help technical assistance centers directed by and for mental health consumers. Assistance to supporters of consumers was added to the program in 1998.

2.2 Service Population

The primary focus for activities of the Consumer/Peer-Run TACs must be individual's serious mental illnesses. These individuals should reflect a culturally and racially diverse population. Services must be provided to the full range of mental health consumers and must not be limited to specific subpopulations of adults with mental illness. In addition, outreach and assistance should be available to a range of stakeholders, including State mental health systems serving adults, consumer supporters, service providers, and the general public.

2.3 Tenets of Mental Health Self-Help

The values and philosophies that guide consumer self-help are the driving forces behind its development and success. SAMHSA expects these values and philosophies to be the cornerstone of programs funded under this announcement, including:

- Empowerment—grantees must promote the ability of consumers to make decisions that directly affect their own lives;
- Independence—grantees must support consumers in striving for self-reliance, and in pursuing opportunities to function as productive citizens;
- Responsibility—grantees must encourage individuals to take responsibility for themselves and others;
- Choice—grantees must promote an environment in which consumers can make informed choices about treatment, housing, and other services and supports;
- Respect and Dignity—grantees must promote the idea that all individuals are valued and have skills and strengths to offer society; and,
- Transformation—grantees must advocate for changes in how consumers/survivors are treated by the mental health system and society at large.

2.4 The Roles of Consumers and Consumer Supporters in the Program

Mental health consumer/survivor self-help is the process by which mental health consumers provide assistance to one another. This process involves both people with mental illnesses (*i.e.*, "consumers'') as well as "consumer supporters'' (individuals, such as parents, siblings, spouses and significant others who are involved with the support of the consumer).

The roles of consumers and consumer-supporters are distinct but share some common elements. Both serve an important role in providing opportunities for mental health consumers to assist one another.

Examples of the Role of Consumers:

- Providing mutual support to peers to facilitate recovery.
- Educating providers, community leaders, and others on the value of peer-run programs to transform mental health systems.
- Developing, administering, researching and evaluating peer-run programs.
- Partnering with providers, researchers, advocates and others to promote peer-run programs.
- Providing training and consultation to other consumer/peer-run programs to expand such approaches.
- Fostering the financing and human resource development of peer-run programs and the identification, dissemination and application of evidence based practices of peer-run programs.

Examples of the Role of Consumer Supporters:

- Educating professionals about the value of consumer/peer-run programs and self-help approaches;
- Assisting consumer/peer-run groups to obtain needed resources;
- Facilitating referrals to consumer/peer-run programs;
- Providing the necessary training, expertise and knowledge to consumers;
- Facilitating in the collection and dissemination of research findings, evaluation and data related to consumer/peer-run programs;
- Developing policies to foster consumer/peer-run programs through finances and human resource development (*i.e.* certification and credentialing); and,
- Identifying, disseminating and applying best practices on consumer/peer run programs.

2.5 Program Goals

Goals of the Consumer/Peer-Run TACs program include:

(1) Promoting skills development for consumers with an emphasis on leadership, business and management;

(2) Strengthening consumer organizations and leadership in communities;

(3) Improving collaboration among consumers, families, advocates, providers, administrators and build coalitions to transform community mental health services and supports;

(4) Increasing the opportunities for knowledge application and field-based skill building of self-management/self-help approaches; and,

(5) Increasing consumer participation in all aspects of mental health system transformation, including: planning, development, evaluation and policy formation.

2.6 Program Focus and Examples of Activities

Applicants must select two of the program foci listed below as areas of concentration for the proposed project. Although focus area number four is specifically dedicated to cultural outreach and self-help adaptation, all activities for selected focus areas must be culturally and linguistically appropriate for diverse service populations.

(1) *Self-care/Self-management:* Improving knowledge and information on best practices of consumer/peer-run programs and self-management approaches for people with serious mental illnesses. Examples of activities include: Analyzing and producing materials on self-help best practices; convening community stakeholders and providers to identify barriers to implementing exemplary models.

(2) *Employment:* Improving consumer workforce development. Examples of activities include: Providing technical assistance to State and local organizations on recruiting and retaining self-help practitioners; providing technical assistance to consumers reentering the job market; providing technical assistance on identifying financing mechanisms for hiring peer employees.

(3) *Program Management and Administration:* Facilitating business and management training and other skill development efforts for consumer/peer-run programs. Examples of activities include: Providing technical assistance to consumer organizations on non-profit management issues including leadership and financial management; developing and conducting training of trainers focused on skills development to promote self-help.

(4) *Cultural Outreach and Self-Help Adaptation:* Making self-help/self-management approaches available and accessible to specific cultural groups (*e.g.* African Americans, Hispanics/Latinos, Asian and Pacific Islanders, American Indians, and Alaska Natives). Examples include: Identifying models for serving diverse cultural groups; convening policy makers and consumer leaders to develop guidelines on how to serve ethnically diverse people.

(5) *Recovery:* Increasing the knowledge on what facilitates or hinders recovery at the individual, as well as systems level. Examples include: Serving as a repository for the collection, analysis and development of materials on recovery from mental illness; convening policy makers and community leaders to develop a strategic plan for the development of recovery-based approaches; educating supporters on the role they can play in facilitating the recovery of consumers.

2.7 Guidelines for Assessing Consumer and Family Participation

Applicants must have experience or a track record of involving mental health consumers. The applicant organization should have a documented history of positive programmatic involvement of recipients of mental health services. This involvement should be meaningful and span all aspects of the organization's activities as described below:

Program Mission—An organization's mission must reflect the value of involving consumers in order to improve outcomes.

Program Planning—Consumers are involved in substantial numbers in the conceptualization of initiatives including identifying community needs, goals and objectives, and innovative approaches. This includes participation in the development of the grant application for this program. Strategies must also incorporate consumer/peer-run program approaches.

Training and Staffing—The staff of the organization must have substantive training in and be familiar with consumer/peer-run program approaches and related issues. Attention must be placed on staffing the initiative with people who are themselves consumers. Such staff must be paid commensurate with their work and in parity with other staff.

Rights Protection—Consumers and family members must be fully informed of all their rights including those designated by the President's Healthcare Consumer Bill of Rights and Responsibilities: Respect and Non Discrimination.

Program Administration, Governance, and Policy Determination—Consumers must be hired in key management roles to provide project oversight and guidance. Steering Committees must be established for this project, which are composed of a minimum of 75% consumers. Such committee members should be fully trained and compensated for their activities, including childcare.

2.8 Definitions

CMHS has used the following definitions in developing this announcement:

Consumer—An individual, 18 years of age or older, with severe mental illness. CMHS recognizes that some consumers may choose to identify themselves with other terminology.

Consumer Supporter—An individual involved with the support of a consumer (age 18 or older), including parents, siblings, spouses and significant others, friends, co-workers, and neighbors, who provide support in a nonprofessional capacity.

Consumer Organization—An organization that is controlled and managed by consumers and is dedicated to the transformation of mental health service systems which are consumer and family driven. The organization must have a board of directors comprised of more than 50 percent consumers.

Consumer Supporter Organization—An organization, including volunteer mental health organizations, which is controlled and managed by consumer supporters and mental health consumers. It must be dedicated to the transformation of mental health service systems which are consumer and family driven and have a board of directors comprised of more than 50 percent consumer supporters.

2.9 Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or "GPRA") requires all Federal agencies to:

- Develop strategic plans that specify what they will accomplish over a 3- to 5-year period;
- Set performance targets annually related to their strategic plan; and,
- Report annually on the degree to which the previous year's targets were met.

Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures and justify requests for funding.

To meet these requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. Grantees are required to report these GPRA data to SAMHSA on a timely basis.

GPRA measures related to each of the program focus areas referenced in Section I–2.6 in this announcement are under development. In your application, you must demonstrate your ability to collect and report on these measures, and you may be required to provide some baseline data.

More detailed information about how to collect and report on these measures may be obtained by contacting the Government Project Officer, listed in Section VII—"Agency Contacts" of this announcement.

The terms and conditions of the grant award will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

2.10 Evaluation

Grantees will be required to participate in a collaborative assessment designed to evaluate the Consumer/Peer-Run TACs' effectiveness in providing technical assistance to foster consumer/peer-run programs. This evaluation will be managed by an external evaluator who will be responsible for reporting overall the findings to SAMHSA.

The current evaluation activities assess customer satisfaction by distributing a Customer Satisfaction Survey to any person who contacts the Consumer/Peer-Run TACs for assistance. Applicants should be aware that evaluation of the Consumer/Peer-Run TACs will be expanded to provide increased feedback to the project to

improve services. Grantees will be required to participate in the additional evaluation activities.

2.11 Grantee Meetings

The Program or Project Director must plan to attend at least three meetings in each year of the grant, and must include funding for this travel in your budget. This includes two meetings of the Center for Mental Health Services National Advisory Council (including the pre-meeting of the Subcommittee on Consumer/Survivor issues) and the Alternatives Conference. These meetings will usually be held in the Washington, DC area and attendance is mandatory.

2.12 Alternatives Conference

Each of the three Consumer National Technical Assistance Centers will rotate as ''host'' for the annual national conference entitled ''Alternatives,'' a meeting of consumers from across the Nation. This conference is intended to present a variety of viewpoints, provide for the exchange of information and ideas, and provide technical assistance on many topics. The selection of the conference host for the first year of the grants will be determined by the score on Section G (Plan for Alternatives Conference) of the Project Narrative. In subsequent years, the selection of the host will be based on the next highest scores on Section G. Each grantee will host the conference at least once during the 3-year project period.

Since each Consumer TAC will host one Alternatives Conference during the project period, applications must include a budget for the Conference of $133,000. The money is for support of the conference and does not include scholarship support. Guidelines for Conducting the Alternatives Conference are in Appendix D. Consumer organizations may not apply only for facilitating the Alternatives Conference or only for the Consumer National Technical Assistance Center.

II. Award Information

1. Award Amount

It is expected that $1.75 million will be available to fund up to five National Technical Assistance Centers on Consumer/Peer-Run Program awards in FY 2004, three national consumer self-help technical assistance centers and two national consumer-supporter self-help technical assistance centers. Annual awards are expected to be up to $350,000 per year in total costs (direct and indirect). Applicants may request a project period of up to three years.

Proposed budgets cannot exceed $350,000 in any year of the proposed project. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

An additional $133,000 will be competitively awarded each year to one of the three successful national consumer technical assistance centers to facilitate the Alternatives Conference. (See section entitled Alternatives Conference in Section V: Application Review).

2. Funding Mechanism

Awards will be made as grants.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants are domestic, private, *nonprofit* entities, including faith-based organizations, which meet the criteria for consumer or consumer-supporter organizations found in Section I–2.7 Definitions and the following requirements:

(1) Applicant organizations must have been in operation for a minimum of one year.

(2) An applicant must complete the Certification of Consumer and Consumer-Supporter Organization Eligibility (See Appendix B of this document), indicating that the applicant meets all eligibility requirements. Applicants must complete and sign a Certification of Eligibility and provide necessary supportive documentation.

The statutory authority for this program precludes grants to for-profit organizations.

2. Cost-Sharing

Cost-sharing is not required in this program and applications will not be screened out on the basis of cost sharing. However, you may include cash or in-kind contributions in your proposal as evidence of commitment to the proposed project.

3. Other

Applications must comply with the following requirements or they will be screened out and will not be reviewed: Use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.)

1. Address To Request Application Package

You may request a complete application kit by calling the National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *www.samhsa.gov.* Click on ''Grant Opportunities'' then click on ''Useful Information for Applicants.''

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and,
- Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1. Applications that are not submitted on the required application form will be screened out and will not be reviewed.
- Request for Applications (RFA)—Includes instructions for the grant application. This document is the RFA.

You must use all of the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

- *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the

Dun and Bradstreet Web site at *www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]

• *Abstract*—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.

• *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.

• *Budget Form*—Use SF 424A, which is part of the 5161–1. Fill out Sections B, C, and E of the SF 424A.

• *Project Narrative and Supporting Documentation*— The Project Narrative describes your project. It consists of Sections A–F for national consumer supporter technical assistance centers and Sections A–G for the national consumer technical assistance centers. The Project Narrative for Sections A–F in total may not be longer than 25 pages. The Project Narrative for Section G may not exceed 3 additional pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information'' of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections H through I. There are no page limits for these sections, except for Section F, Biographical Sketches/Job Descriptions.

• *Section H*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project.

• *Section I*—Biographical Sketches and Job Descriptions.

—Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

—Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

—Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• *Appendices 1 through 5*—Use only the appendices listed below. Do not use more than 30 pages for the appendices. Do not use appendices to extend or replace any of the sections of the Project Narrative. Reviewers will not consider them if you do.

—*Appendix 1:* Letters of Support
—*Appendix 2:* Certificate of Eligibility
—*Appendix 3:* Sample Consent Forms
—*Appendix 4:* Data Collection Instruments/Interview Protocols
—*Appendix 5:* Letter to the SSA

• *Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1.

• *Certifications*—Use the "Certifications'' forms found in PHS 5161–1.

• *Disclosure of Lobbying Activities*—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots'' lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

• *Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

• Information provided must be sufficient for review.

• Text must be legible.

—Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

—Text in the Project Narrative cannot exceed 6 lines per vertical inch.

• Paper must be white paper and 8.5 inches by 11.0 inches in size.

• To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

—Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 25-page limit for the Project Narrative (Sections A through F) and 3-page limit for Section G.

—Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 25 (or 28). This number represents the full page less margins, multiplied by the total number of allowed pages.

—Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

• The 30-page limit for Appendices 1 through 5 cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

• Pages should be typed single-spaced with one column per page.

• Pages should not have printing on both sides.

• Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

You must describe your procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section H of your application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of your application may result in the delay of funding.

Confidentiality and Participant Protection: All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must document how you will address these requirements or why they do not apply.

1. *Protect Clients and Staff from Potential Risks*

• Identify and describe any foreseeable physical, medical, psychological, social, legal, or other risks or adverse affects.

• Discuss risks that are due either to participation in the project itself or to the evaluation activities.

• Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide help if there are adverse effects to participants.

• Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. *Fair Selection of Participants*

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, or others who are likely to be vulnerable to HIV/AIDS.

• Explain the reasons for *including or excluding* participants.

• Explain how you will recruit and select participants. Identify who will select participants.

3. *Absence of Coercion*

• Explain if participation in the project is voluntary or required. Identify possible reasons why it is required, for example, court orders requiring people to participate in a program.

• If you plan to pay participants, state how participants will be awarded money or gifts.

• State how volunteer participants will be told that they may receive services even if they do not participate in the project.

4. *Data Collection*

• Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

• Provide in Appendix 2, ''Data Collection Instruments/Interview Protocols,'' copies of *all* available data collection instruments and interview protocols that you plan to use.

5. *Privacy and Confidentiality*

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

—How you will use data collection instruments.

—Where data will be stored.

—Who will or will not have access to information.

—How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. *Adequate Consent Procedures*

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.

• State:

—Whether or not their participation is voluntary.

—Their right to leave the project at any time without problems.

—Possible risks from participation in the project.

—Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must get *written* informed consent.

• Indicate if you will get informed consent from participants or from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include sample consent forms in your Appendix 3, ''Sample Consent Forms.'' If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data.

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. *Risk/Benefit Discussion*

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations. Depending on the evaluation design you proposed in your application, you may have to comply with the Protection of Human Subjects Regulations (45 CFR part 46).

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research

Protections (OHRP) and that IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov.* You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

3. Submission Times and Dates

Applications are due by close of business on June 25, 2004. Your application must be received by the application deadline. Applications sent through postal mail and received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Instructions

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *www.whitehouse.gov/omb/grants/spoc.html.*

- Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.
- If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.
- For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.
- The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SPOC—Funding Announcement No. (SM 04–002).

In addition, community-based, non-governmental service providers who are not transmitting their applications through the State must submit a Public Health System Impact Statement (PHSIS) (approved by OMB under control no. 0920–0428; see burden statement below) to the head(s) of appropriate State or local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. The PHSIS is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. *State and local governments and Indian tribal government applicants are not subject to these requirements.*

The PHSIS consists of the following information:

- A copy of the face page of the application (SF 424); and
- A summary of the project, no longer than one page in length, that provides: 1) a description of the population to be served, 2) a summary of the services to be provided, and 3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's Web site at *www.samhsa.gov.* If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA *must* include a copy of a letter transmitting the PHSIS to the SSA in Appendix 5, "Letter to the SSA.'' The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857, ATTN: SSA—Funding Announcement No. SM 04–011.

In addition:

- Applicants may request that the SSA send them a copy of any State comments.
- The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. 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 number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, ATTN: PRA (0920–0428).]

5. Funding Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21
- State and Local Governments: OMB Circular A–87
- Nonprofit Organizations: OMB Circular A–122
- Appendix E Hospitals: 45 CFR Part 74

In addition, SAMHSA National Technical Assistance Centers On Consumer/Peer-Run Programs Grant recipients must comply with the following funding restrictions:

- Grant funds must be used for purposes supported by the program.
- Grant funds may not be used to pay for the purchase or construction of any building or structure to house any part of the grant project.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857.

Be sure to include the short title and funding announcement number (Consumer/Peer-Run TACs, SM 04–011) and designate whether you are applying for a Consumer National Technical Assistance Center or a Consumer Supporter National Technical Assistance Center in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be

accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored against the requirements listed below for developing the Project Narrative Sections A–F for applicants applying for a consumer supporter National Technical Assistance Center or Sections A–G for applicants applying for a consumer National Technical Assistance Center. Sections A–F describe what you intend to do with your project and may not exceed 25 pages. Section G describes the plan for the Alternatives Conference and may not exceed 3 additional pages.

• In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative'' instructions found in the PHS 5161–1.

• You must use the seven sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.

• Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA Web site at *www.samhsa.gov.* Click on "Grant Opportunities.''

• The Supporting Documentation you provide in Sections H–I and Appendices 1–5 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.

• The number of points after each heading below is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

• Only the points in Section A–F will be used to determine the priority score for the Consumer Technical Assistance Center awards. Section G will be used to select the host for the Alternatives Conference. The Consumer Technical Assistance Center with the highest score on Section G will be given the first opportunity to host the next Conference and the Conference host will be rotated to the other Consumer TACs for years 2 and 3 of the grant program.

Section A: Understanding of the Philosophy & Principals of the Project (25 points)

• Describe the specifics of how your organization has integrated and embraced the tenets of the mental health self-help movement, philosophies and fundamental principals described in Section I–2.3 of this Announcement and how consumers and family members have been involved in the activities of your organization.

• Describe what you consider to be your organization's unique characteristics and capabilities to provide the leadership as either a national consumer or consumer supporter technical assistance center, including your organization's history and experience in providing leadership in the field for consumer/peer-run programs for people with a serious mental illness.

• Provide data on the total number of employees (full and part-time) in your organization and any parent organization, and the number and percent that are consumers and consumer supporters.

• Describe the ethnic and cultural diversity within your organization. Indicate whether any staff members are fluent in languages other than English and indicate the languages they can read, write, speak, and understand in conversation.

• Describe the types and amount of technical assistance services your organization currently provides to consumers and consumer supporters, stakeholders of the mental health system, including faith- and community-based organizations (representing diverse racial, ethnic, and cultural groups), and mental health providers.

• Describe the service population for technical assistance. Include numbers to be served and demographic information. Discuss the target population's language, beliefs, norms and values, as well as socioeconomic factors that must be considered in delivering technical assistance to this population.

Section B: Understanding of the Project/Materials Development (20 points)

• Clearly identify which two (2) of the "Program Focus'' topics (referenced in Section I–2.6 of this announcement) your organization will concentrate on for this project and include a description of how cultural and linguistic issues will be addressed.

• Clearly state the purpose of the proposed project and how it will address the stated problem/issue and assist in achieving the goals of the program.

• Describe specific approaches for accomplishing the goals outlined in Section I–2.5 (Program Goals) of this announcement, including how these approaches will be culturally and linguistically appropriate for a diverse service population.

• List and briefly describe materials you will develop, describe your plan for disseminating these materials, and identify how these products will be tailored to the cultural and linguistic needs of the select audience.

• Describe the technological systems you will use to serve as a repository and procedures for stakeholders to access these materials in a timely manner.

• Describe your organization's experience in producing and disseminating self-help/self-management materials to multiple stakeholder groups.

• Describe your organization's experience in organizing, planning, and conducting small working meetings.

• Describe the resources available and the capabilities of your organization for synthesizing, summarizing and producing documents that are visually appealing, culturally and linguistically relevant, using maps and graphics, as appropriate.

Section C: Provision of Consultation and Training (20 points)

• Describe your plans for providing consultation, training, and technical assistance to a diverse group of stakeholders.

• Describe your plans for developing training curricula and strategies for making sure the training materials are culturally and linguistically appropriate.

• Describe your plans for developing and using web site and other web technology to disseminate materials and information.

• Describe the resources available and the capabilities of your organization for developing and operating a web site and using other Internet telecommunications technology.

Section D: Stakeholder Engagement (15 points)

• Describe the process you will use to solicit input from a culturally diverse group of stakeholders regarding the development and dissemination of materials and other technical assistance services and activities.

• Describe the process you will use to identify and reach culturally diverse populations (*e.g.,* African Americans, Hispanics/Latinos, Asian & Pacific Islanders, American Indians, and Alaska Natives) for input into your Center's activities.

• Identify issues that will be important topics of discussion for the field. Describe which issue is most important for each stakeholder group and how you will engage the stakeholders in such discussions.

• Describe your plan to make relevant stakeholders aware of your TA Center and the activities, services, and materials available.

• Describe the resources available and the capabilities of your organization for promoting, participating in, and convening discussions among stakeholders about topics of importance.

Section E: Organizational Capabilities and Project Management Plan (15 points)

• Describe your plans for organizing the TA Center, including the organizational structure, allocation of resources, and staffing plans that reflect the expertise needed and consultants who supplement the staff.

• Describe the process and system you will use to ensure, prioritize, track and follow-up requests for products and technical assistance services and activities.

Section F: Evaluation Plan Methodology (5 points)

• Grantees must describe their plans for collecting and reporting on the required GPRA measures.

• Describe how you will incorporate, manage and as necessary change your project to incorporate and respond to issues raised by the external evaluation.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

Section G: Plan for the Alternatives Conference (25 points)

This section is to be answered only by applicants applying for funding for a National Consumer Technical Assistance Center. The score will only be used to select the conference host for the first year of the grant.

• Describe your organization's experience in organizing, planning, and conducting very large conferences and meetings.

• Describe your experience with certified meeting planners and how you would choose such an individual or organization.

• Describe how you would develop the theme for the Conference.

• Describe the process for selecting the steering committee.

• Describe the process for planning the conference and selecting the location and the hotel.

• Identify issues you feel should be important topics for the next Alternatives Conference.

• Describe the resources available and the capabilities of your organization for planning, organizing, and implementing the Conference.

• Describe the procedure for rating workshops.

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the evaluation criteria listed above. Applications for programs having individual awards over $100,000 must also be reviewed by the appropriate National Advisory Council.

Decisions to fund a grant are based on:

• The strengths and weaknesses of the application as identified by peer reviewers and, when applicable, approved by the appropriate National Advisory Council;

• Availability of funds;

• Equitable distribution of awards in terms of geography (including urban, rural and remote settings) and balance among target populations and program size;

• Distribution of awards to support implementation of varied program focus areas; and,

• After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points Understanding of the Philosophy & Principals of the Project—25 points.

Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties. If an evaluation criterion to be used for this purpose has the same number of possible points as another evaluation criterion, the criterion listed first in Section V–1 will be used first.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

• You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site *www.samhsa.gov/grants/2004/useful_info.asp.*

• Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be negotiated with the grantee prior to grant award. These may include, for example:

—Actions required to be in compliance with human subjects requirements;
—Requirements relating to additional data collection and reporting;
—Requirements relating to participation in a cross-site evaluation; or
—Requirements to address problems identified in review of the application.

• You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants.'' This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide annual and final progress reports. The final progress report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing

plans developed during the grant period.

• Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that infrastructure development and enhancement efforts can be sustained, your financial reports must explain plans to ensure the sustainability of efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. The performance requirements for SAMHSA's Grants for National Technical Assistance Centers On Consumer/Peer-Run Programs grants are described in Section I—2.9 under "Data and Performance Measurement''.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

For questions about program issues, contact: Risa S. Fox, M.S., Public Health Advisor, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857, (301) 443–3653, E-mail: *rfox@samhsa.gov.*

For questions on grants management issues, contact: Gwendolyn Simpson, Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration/OPS, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4456, E-mail: *gsimpson@samhsa.gov.*

Appendix A—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.,* relating to eligibility) may be stated in the specific funding announcement. Please check the entire funding announcement before preparing your application.

• Use the PHS 5161–1 application.

• Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

• Information provided must be sufficient for review.

• Text must be legible.

—Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

—Text in the Project Narrative cannot exceed 6 lines per vertical inch.

• Paper must be white paper and 8.5 inches by 11.0 inches in size.

• To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

—Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.

—Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the total number of allowed pages. This number represents the full page less margins, multiplied by the total number of allowed pages.

—Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

• The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

• The 10 application components required for SAMHSA applications should be included. These are:

—Face Page (Standard Form 424, which is in PHS 5161–1)

—Abstract

—Table of Contents

—Budget Form (Standard Form 424A, which is in PHS 5161–1)

—Project Narrative and Supporting Documentation

—Appendices

—Assurances (Standard Form 424B, which is in PHS 5161–1)

—Certifications (a form within PHS 5161–1)

—Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)

—Checklist (a form in PHS 5161–1)

• Applications should comply with the following requirements:

—Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the specific funding announcement.

—Budgetary limitations as specified in Sections I, II, and IV–5 of the specific funding announcement.

—Documentation of nonprofit status as required in the PHS 5161–1.

• Pages should be typed single-spaced with one column per page.

• Pages should not have printing on both sides.

• Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

• Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not

use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix B: Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available from recognized experts regarding effectiveness and acceptability.

Consumer-Operated Services: These programs, run by consumers, include drop-in centers, consumer operated supported businesses, employment and housing programs, crisis services, outreach programs and case management programs.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost-Sharing or Matching: Cost-sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost-sharing or matching is not required, and applications will not be screened out on the basis of cost-sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Culturally competent services: The delivery of services that are responsive to the cultural concerns of racial and ethnic minority groups, including their language, histories, traditions, beliefs, and values.

Emerging Practice: Emerging practices are specific approaches that receive high marks from consumers and/or others, but which are too new to have received scientific attention.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

National Registry of Effective Programs (NREP): The NREP was developed to review, identify and disseminate effective evidence-based practices for substance abuse prevention programs.

Peer Support: Peer Support embodies a variety of approaches that are based on the belief that people who share the same illness can help each other through mutual support. These practices and programs are lead by peers rather than by professionals.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as a) community collaboration and consensus building, b) training and overall readiness of those implementing the practice, and c) sufficient ongoing supervision for those implementing the practice.

The President's New Freedom Commission on Mental Health entitled "Achieving the Promise: Transforming Mental Health Care in America'' identified primary six goals:

Goal 1: Americans Understand that Mental Health Is Essential to Overall Health.

Goal 2: Mental Health Care Is Consumer and Family Driven.

Goal 3: Disparities in Mental Health Services Are Eliminated.

Goal 4: Early Mental Health Screening, Assessment, and Referral to Services Are Common Practice.

Goal 5: Excellent Mental Health Care Is Delivered and Research Is Accelerated.

Goal 6: Technology Is Used to Access Mental Health Care and Information.

Achieving these goals will transform mental health care in America.

Promising Practice: Promising practices are practices that are well known and have either expert consensus or other support which show promise in improving outcomes for consumers.

Recovery: Refers to the process in which people are able to live, work, learn, and participate fully in their communities. For some individuals, recovery is the ability to live a fulfilling and productive life despite a disability. For others, recovery implies reduction or complete remission of symptoms. Science has shown that having hope plays an integral role in an individual's recovery.

Resilience: Means the personal and community qualities that enable us to rebound from adversity, trauma, tragedy, threats, or other stresses—and to go on with life with a sense of mastery, competence, and hope. We now understand from research that resilience is fostered by a positive childhood and includes positive individual traits, such as optimism, good problem-solving skills, and treatments. Closely-knit communities and neighborhoods are also resilient, providing supports for their members.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Stigma: Refers to a cluster of negative attitudes and beliefs that motivate the general public to fear, reject, avoid, and discriminate against people with mental illnesses. Stigma is widespread in the United States and other Western nations.16 Stigma leads others to avoid living, socializing, or working with, renting to, or employing people with mental disorders—especially severe disorders, such as schizophrenia. It leads to low self-esteem, isolation, and hopelessness. It deters the public from seeking and wanting to pay for care.5 Responding to stigma, people with mental health problems internalize public attitudes and become so embarrassed or ashamed that they often conceal symptoms and fail to seek treatment.

Target population catchment area: The target population catchment area is the geographic area from which the target population to be served by a program will be drawn.

Wellness Recovery and Action Plan (WRAP): A recovery-focused practice in which an individual develops his/her own system for monitoring and responding to symptoms in order to achieve the highest possible levels of wellness.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix C: Certificate of Eligibility for National Technical Assistance Centers on Consumer/Peer Run Programs

An authorized representative of the applicant organization (whose signature appears on page one of the face page of the application PHS form 5161) must complete and sign this Certificate. Appendix 2 of the application must include this Certificate and all supporting documentation specified within it.

All applicant organizations must meet the criteria of either consumer organizations or consumer supporter organizations, Sections A or B below *and* the requirements of Section C.

(A) Applicants for the National Technical Assistance Centers (controlled and managed by consumers) must certify and attest to the following:

- I certify that:

—The applicant is an organization that is controlled and managed by consumers and dedicated to the improvement of mental health services. Please include minutes of meetings and all other pertinent material to demonstrate that your organization is

controlled and managed by consumers and dedicated to the improvement of mental health services.

—The applicant organization has a board of directors comprised of more than 50 per cent consumers. Please include names of your Board of Directors and length of time each has served.

—The consumers on the board of directors are individuals 18 years of age or older with severe mental illness.

—The consumer Board of Directors has been in operation for more than one year. Please include minutes and names of individuals who have served on the Board of Directors starting in calendar year 2003.

(B) Applicants for the National Technical Assistance Centers (controlled and managed by consumer supporters) must certify and attest to the following:

• I certify that:

—The applicant is an organization that is controlled and managed by consumer supporters and dedicated to the improvement of mental health services. Please include minutes of meetings and all other pertinent material to demonstrate that your organization is controlled and managed by consumer supporters and dedicated to the improvement of mental health services.

—The applicant organization has a Board of Directors comprised of more than 50 per cent consumer supporters. Please include names of your Board of Directors and length of time each has served.

—The consumer supporters on the Board of Directors are individuals involved with the support of a consumer (age 18 or older) including parents, siblings, spouses and significant others, friends, co-workers, and neighbors who provide support in a non-professional capacity.

—The consumer supporter Board of Directors has been in operation for more than one year. Please send minutes and names of individuals who served on the Board of Directors starting in calendar year 2003.

(C) All applicants for National Technical Assistance Centers on Consumer/Peer-Run Programs must certify that:

—The applicant organization has been in operation as a legal entity for a minimum of one year. Please submit proof.

—The United States Federal Government Internal Revenue Service (I.R.S.) has issued the applicant organization tax-exempt status. Supporting documentation of such status dated prior to January 2004 is included in this application.

—The applicant organization will take an active role in the fiscal management and oversight of the project and will be legally, fiscally, administratively, and programmatically responsible for the grant and *has not submitted* a "pass through,'' "umbrella,'' or "cover letter'' application.

This form must be signed and dated below by an authorized representative of the applicant organization certifying that the aforementioned statements are accurate.

Type or print name and title

Signature of Applicant certifying validity of all information contained in this document

Date of Signature

Type: Consumer or Consumer Supporter TAC

Appendix D: Requirements for Planning CSP-Supported National Consumer Conferences

Since 1985, the Center for Mental Health Services' (CMHS) Community Support Program (CSP) has supported national conferences for primary consumers (also referred to as ex-patients or survivors) of mental health services. The purpose of this issuance is to facilitate the planning of these conferences by clarifying CMHS and CSP policies and defining the roles and responsibilities of grantees organizing the event, the Government Project Officer (GPO), the Conference Advisory Committee, and other CMHS staff involved in planning these conferences.

Purpose of Conference

The purpose of this conference is to provide a forum for consumers from across the Nation to meet, exchange information and ideas, and provide and receive technical assistance on a variety of topics of interest, such as peer support, consumer-operated services, self-help, protection and advocacy issues, empowerment, and recovery. The conference also transfers knowledge on best practices in mental health and support services. The information and knowledge gained through attending this conference enables consumers to advocate for effective individual treatments and services, as well as for broader managed care and service system improvements.

Participants

The conference is open to all individuals who have had or are currently experiencing a mental health disorder. It also is open to others at the discretion of the Advisory Committee.

Grantee Organizing Conference

The grantee organization responsible for overseeing the conference will select a site that is accessible and affordable and, to the extent possible, different from previous sites for national conferences. The grantee also will be responsible for the logistics of the conference, including moderating the Conference Advisory Committee meetings and teleconference calls; developing and disseminating materials; handling publicity; and arranging for lodging, meals, registration, meeting rooms, emergency procedures, transportation, and the conference evaluation. Within 3 months of the conference, the grantee is responsible for submitting a final report on the conference that details the expenditures, summarizes the evaluations, and provides recommendations for future national consumer conferences.

Government Project Officer (GPO)

The GPO will approve the individual(s) who have a major role in coordinating the conference and will review and provide guidance on the composition of the Conference Advisory Committee, the proposed budget expenditures for the conference, policies regarding scholarships, and logistical plans. Furthermore, the location, agenda, and specific conference brochure providing presenters and workshop descriptions must be approved by the GPO prior to finalizing and sending to the field. The GPO will participate in Conference Advisory Committee meetings and teleconferences. The GPO also will provide technical assistance, as requested.

Advisory Committee and Planning Process

The conference will be planned by a committee formed approximately 1 year prior (as funding permits) to the actual conference. The members will include duly appointed representatives of the national consumer organizations, Federal CMHS CSP staff (Grant Project Officer), CMHS Consumer Affairs liaison staff, and the Directors or designees of the CSP-funded Consumer Technical Assistance Centers. The Committee will reflect gender, ethnic/minority representation, and, to the extent possible, geographic distribution and involvement of individuals who have not participated on previous Conference Advisory Committees.

The Committee will devise a process for gathering information from consumers throughout the Nation on topics of interest for the agenda and speakers. Final decisions regarding the agenda will be made by the Advisory Committee. However, the workshop areas selected should represent a variety of viewpoints and mainly include workshops run by and for consumers.

The Advisory Committee is responsible for designing the programmatic aspects of the conference, including the theme and logo. Only members of the Committee may vote on decisions regarding the agenda and speakers for the conference. The Advisory Committee should meet physically once and handle continuing business through telephone conference calls, mailings, and computer e-mail.

Involvement of National Consumer Organizations

The conference agenda and official workshops *may not be used* to further the development of national consumer organizations or for other purely parochial interests. However, individuals from the various national consumer organizations may use the times before and after the conference, free times scheduled on the agenda, and evenings to conduct activities related to promoting or planning for their respective organizations. Of course, national consumer organizations and other organizations may sponsor substantive workshops.

Information related to the business activities of individuals or national organizations must be kept separate from the conference agenda and sent out in separate mailings.

BILLING CODE 4162–20–P

Appendix E: Customer Satisfaction Survey

Form Approved
OMB NO.0930-0197
Exp. Date 12/31/04
See burden statement on reverse

NAME OF TAC
CUSTOMER SATISFACTION SURVEY

We would like to first ask you some questions about the quality of the services you received. Please use the scale below, to rate the quality of the services. Circle the appropriate number.

1. **Strongly Disagree (SD)**
2. **Disagree (D)**
3. **Agree (A)**
4. **Strongly Agree (SA)**
5. **Not Applicable**

1. I liked the quality of the:

	SD	D	A	SA	NA
a. services over the phone	1	2	3	4	5
b. information I received	1	2	3	4	5
c. materials I received	1	2	3	4	5
d. assistance with my training needs that I received	1	2	3	4	5

2. Please utilize the same scale to rate how much you agree with the following statements:
Again, circle the appropriate number.

	SD	D	A	SA
a. I was able to get the kind of information or assistance I wanted	1	2	3	4
b. The information or assistance was delivered in a timely manner.	1	2	3	4
c. If I need additional information or assistance, I would contact NAME OF TAC.	1	2	3	4
d. Overall, I am satisfied with the information or assistance I received.	1	2	3	4
e. I was treated with respect and dignity by the staff at NAME OF TAC.	1	2	3	4
f. Overall, I was disappointed with the information or assistance I received from NAME OF TAC.	1	2	3	4

3. How would you rate your ability to accomplish things now compared to before you received your service(s)?

1. Much Better
2. A Little Better
3. About the Same
4. A Little Worse
5. Much Worse

4. Do you have recommendations for other types of services, information, or assistance that **NAME OF TAC** should make available? (**Note:** Please *do not* request specific individual referral or treatments in this space. If needed, please call **NAME OF TAC** at **TAC PHONE NUMBER** for such requests).

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information to SAMHSA Reports Clearance Officer, Room 16-105, 5600 Fishers Lane, Rockville, MD 20857. 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 control number for this project is 0930-0197.

Please return within the next week to:

Dated: April 19, 2004.

Daryl Kade,

Director, Office of Policy Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–9149 Filed 4–21–04; 8:45 am]

BILLING CODE 4162–20–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–30]

Notice of Submission of Proposed Information Collection to OMB; Enforcement of Federal Labor Standards

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to collect information necessary to fulfill its obligation to enforce Federal labor standards provisions, especially to act upon allegation of labor standards violations.

DATES: Comments Due Date: May 24, 2004.

ADDRESSES: Interest persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2501–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Enforcement of Federal Labor Standards.

OMB Approval Number: 2501–Pending.

Form Numbers: HUD–4730k HUD–4730–E, HUD–4731.

Description of the Need for the Information and Its Proposed Used:

HUD is requesting approval to collect information necessary to fulfill its obligation to enforce Federal labor standards provisions, especially to act upon allegation of labor standards violations.

Respondents: Individuals or households, Business or other for-profit, State, local, or tribal government.

Frequency of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,500	1		0.5		1,250

Total Estimated Burden Hours: 1,250.

Status: Existing collection in use without an OMB control number.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 16, 2004.

Wayne Eddins,

Departmental PRA Compliance Officer, Office of the Chief Information Officer.

[FR Doc. 04–9081 Filed 4–21–04; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–14]

Notice of Proposed Information Collection: Comment Request; HUD Conditional Commitment/Direct Enforcement Statement of Appraised Value

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 21, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room P8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Conditional Commitment/Direct Enforcement Statement of Appraised Value.

OMB Control Number, if applicable: 2502–0494.

Description of the need for the information and proposed use: This request for OMB review involves a reinstatement of a previously approved information collection, Form HUD 29800.5B, Conditional Commitment/ Direct Enforcement Statement of Appraised Value (OMB control number 2502–0494). Section 203 of the National Housing Act (Pub. L. 479, 48 Stat. 1256, 12 U.S.C. 1701 *et seq.*) authorizes the Secretary of the Department of Housing and Urban Development to insure mortgages on single-family homes, including proposed and existing construction, when requested by FHA approved mortgagees. Form HUD 92800.5B serves as the mortgagee's conditional commitment/direct endorsement of FHA mortgage

insurance on the property. The form provides for a statement of the property's appraised value and other required FHA disclosures to the homebuyer, including specific conditions that must be met before HUD can endorse a firm commitment for mortgage insurance.

Agency form numbers, if applicable: HUD–92800.5B.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 140,000 hours; the number of respondents is 1,200,000 generating approximately 1,200,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response .12 hours per response.

Status of the proposed information collection: Reinstatement, with change, of previously approved collection for which approval will expire on June 30, 2004.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 14, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 04–9082 Filed 4–21–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 24, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Eric R. Keltner, Carmel, IN, PRT–085194.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jonathan C. Arn, Brundidge, AL, PRT–085740.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kurt R. Pettipiece, Thermopolis, WY, PRT–085482.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Everett C. Madson, Omaha, NE, PRT–085481.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: John L. Wathen, Leonardtown, MD, PRT–085545.

The applicant requests a permit to import a polar bear (Ursus maritimus) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Dale S. Jacobs, York, PA, PRT–085296.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Keith A. DeWitt, West Olive, MI, PRT–085484.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Jimmie L. Benton, Jr., Dorr, MI, PRT–085491.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Jimmie L. Benton, Jr., Dorr, MI, PRT–085492.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Dennis F. Gaines, Connelly Springs, NC, PRT–085280.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: April 9, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–9085 Filed 4–21–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 24, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Mark A. Schulz, Bloomfield Hills, MI, PRT–085086.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Lance E. Novak, Laramie, WY, PRT–085125.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Grant R. Oliver, Coolidge, AZ, PRT–077300.

This is an amendment to the applicant's request for a permit previously published in 68 FR 59811, October 17, 2003, for the import of a sport-hunted trophy of one male bontebok (Damaliscus pygargus pygargus) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species. This request is for a permit to import the sport-hunted trophies of two male bontebok culled from a captive herd maintained under the management program of the Republic of South Africa.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Michael A. Stahelin, Woodbridge, IL, PRT–084777.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal use.

Applicant: Ernest J. Meinhardt, Anchorage, AK, PRT–084805.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: John J.J. Rybinski, Manlius, NY, PRT–085099.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Paul C. Buechel, Nolensville, TN, PRT–085149.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Peter A. Larsen, Newcastle, WY, PRT–081356.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Baffin Bay polar bear population in Canada for personal use.

Applicant: Robert J. Raniolo, Yorktown Heights, NY, PRT–085071.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: William B. Scott, Jr., Charlotte, NC, PRT–085064.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal use.

Applicant: William B. Scott, Sr., Charlotte, NC, PRT–085164.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: April 2, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–9086 Filed 4–21–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the

Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
081994 ...	Robert B. Rhyne	69 FR 5569; February 5, 2004	March 24, 2004.
081996 ...	James A. Crane, Jr.	69 FR 5569; February 5, 2004	March 24, 2004.

Dated: April 2, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–9087 Filed 4–21–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Mississippi River Basin Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Mississippi River Basin Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The Mississippi River Basin Regional Panel will meet from 8 a.m. to 12 p.m. on Tuesday, May 25, 2004 with an optional afternoon field trip and 8 to 12 on Wednesday, May 26, 2004. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Mississippi River Basin Regional Panel meeting will be held at the *Holiday Inn Select, 2200 I–70 Drive, SW., Columbia, Missouri, 65203.* Phone *(573) 445–8531.* Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Jerry Rasmussen, Panel Coordinator, Mississippi Interstate Cooperative Resources Association (MICRA) at (309) 793–5811 or Everett Wilson, Aquatic Nuisance Species Task Force, at 703–358–2148.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Mississippi River Basin Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Mississippi River Basin Regional Panel was established by the ANS Task Force in 2003. The Mississippi River Basin Regional Panel, comprised of representatives from Federal, State, local agencies and from private environmental and commercial interests, performs the following activities:

a. Identifies priorities for activities in the Mississippi River Basin,

b. Develops and submits recommendations to the national Aquatic Nuisance Species Task Force,

c. Coordinates aquatic nuisance species program activities in the Mississippi River Basin,

d. Advises public and private interests on control efforts, and

e. Submits an annual report to the Aquatic Nuisance Species Task Force.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Mississippi River Basin of the United States. The Mississippi River Basin Regional Panel on Aquatic Nuisance Species will discuss several topics at this meeting including: Prevention and Control Committee, Research and Risk Assessment Committee, and Education and Communication Committee priorities and activity planning; technical presentations; recommendations for the ANS Task Force; and updates from Panel member organizations and states. The meeting includes an optional field trip on Tuesday afternoon.

Dated: April 12, 2004.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 04–9146 Filed 4–21–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Ferrous Metals Surveys.

Current OMB approval number: 1028–0068.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on ferrous and related metals, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity

Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

Bureau form number: Various (17 forms).

Frequency: Monthly and Annually.

Description of respondents: Producers and Consumers of ferrous and related metals.

Annual Responses: 3,694.

Annual burden hours: 1,978.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 04–9174 Filed 4–21–04; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–PK; HAG 04–0150]

Southeast Oregon Resource Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Lakeview District

ACTION: Meeting notice for the Southeast Oregon Resource Advisory Council, Interior.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold a meeting from 8 a.m. until 5 p.m. Pacific time (P.t.), Monday May 24, 2004, and 8 a.m. until noon on Tuesday May 25, 2004, at the BLM, Lakeview Interagency Office. Members of the public are invited to attend the Lakeview meeting in person at the Lakeview Interagency Office, Conference Room, 1301 South G Street, Lakeview, Oregon 97630. Public comment is scheduled for 8 a.m. on Tuesday, May 25, 2004. An optional field tour for all members will be held on Sunday May 23, 2004, starting at 1 p.m. (P.t.) at the BLM, Klamath Falls Resource Area Office.

The meeting topics that may be discussed by the Council include a discussion of issues within Southeast Oregon related to: Optional field tour on Sunday; Lakeview District noxious weed presentation; Biomass plant in Lakeview; Healthy Forest Initiative (HFI)—Healthy Forest Restoration Act projects (HFRA); Determine RAC role with District and Forest projects; RAC's role with implementation of the Lakeview Resource Management Plan; Klamath Tribe Plan and RAC involvement; Sage grouse update; Charter review for possible changes; Sub committee reports and status; Federal Officials' update and other issues that may come before the Council.

Information to be distributed to the Council members is requested in written format 10 days prior to the Council meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC tour or meeting may be obtained from Pam Talbott, Contact Representative, Lakeview Interagency Office, 1301 South G Street, Lakeview, OR 97630 (541) 947–6107, or *ptalbott@or.blm.gov* and/or from the following Web site *http://www.or.blm.gov/SEOR-RAC.*

Dated: April 14, 2004.

Steven A. Ellis,

District Manager.

[FR Doc. 04–9119 Filed 4–21–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–1120–PG–241A]

Notice of Meeting, Southwest Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on May 21, 2004, at the Bill Heddles Recreation Center, Delta, Colorado, and will begin at 9 a.m. The public comment periods will begin at approximately 9:30 a.m. and 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Southwest, Colorado. Planned agenda topics include: Manager reports, Public comment, Discussion of old business, Uncompahgre Project update, County Pilot Project description and update, Northern Basin Environmental Impact Statement public participation process, Interagency fire preparedness update, and Updates on several ongoing planning efforts in southwestern Colorado.

All meetings are open to the public. The public can make oral statements to the Council at approximately 9:30 a.m. and 3 p.m., or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Western Slope Center Office (BLM), 2465 S. Townsend, Montrose, Colorado 81401, and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. The Bill Heddles Recreation Center is located at 530 Gunnison River Dr., Delta, Colorado.

FOR FURTHER INFORMATION CONTACT: Dave Kauffman, Uncompahgre Field Office, Bureau of Land Management, 2505 S. Townsend, Montrose, Colorado 81401. Phone (970) 240–5340.

Dated: April 13, 2004.

Mark W. Stiles,

San Juan Public Lands Center Manager.

[FR Doc. 04–9175 Filed 4–21–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on April 7, 2004 a proposed consent Decree in *United States* v. *Bullion Beck Mining Corporation, Godiva Silver Mines, Inc., Keystone Surveys, Inc., and Spenst Hansen,* an action under sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), as amended, 42 U.S.C. 9607 and 9613, was lodged with the United States District Court for the District of Utah, Case No. 2:04CV00311 TS.

In this action, the United States sought the recovery of costs incurred and to be incurred by the United states in response to releases or threatened releases of hazardous substances at and from the Eureka Mills NPL site located in Eureka, Utah (the ''Site''). The United States alleged that Bullion Beck Mining Corporation, Godiva Silver Mines, Inc., Keystone Surveys, Inc., and Spenst Hansen (the ''Hansen Companies'') are liable for response costs under CERCLA section 107(a)(1), 42 U.S.C. 9607(a)(1), as the present owner of a portion of the Site upon which hazardous substances have been released.

The Hansen Companies' settlement is based on the limited financial resources available to the Companies and Mr. Spenst Hansen. The Decree provides for various in-kind contributions of materials like clean water and soil necessary to implement the clean up, allows EPA to construct response action structures on the Hansen Company properties, and provides for operation and maintenance of response action structures by the Hansen Companies. The Decree also contains the parties' promises to perform operation and maintenance work necessary to maintain the remedy on those portions of the Site owned by the Hansen Companies.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611, and should refer to *United States* v. *Bullion Beck Mining Corporation, Godiva Silver Mines, Inc., Keystone Surveys, Inc., and Spenst Hansen*, Civil Action No. 2:04CV00311 TS, D.J. Ref. 90–11–3–07993/1.

The Consent Decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202. During the public comment period, the Settlement Agreement, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the consent Decree Library, please enclose a check in the amount of $12.25 for the Hansen Companies Consent Decree (excluding appendices), or $20.75 (including appendices) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–9093 Filed 4–21–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and Burlington Northern and Santa Fe Railway Company, et al. Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on April 9, 2004, a proposed Consent Decree ("Consent Decree'') in the case of *United States of America* v. *Burlington Northern and Sante Fe Railway Company et al.,* Civil Action No. 04–0319–CV–NKL (W.D. MO.), has been lodged with the United States District Court for the Western District of Missouri. the Consent Decree was lodged contemporaneously with the filing of the complaint.

The Complaint seeks performance of work and the recovery of costs incurred in connection with the response action taken at the Armour Road Superfund Site in North Kansas City, Missouri. The Consent Decree requires that a substantial removal action will be performed by two of the Settling Defendants. Four "cash-out'' Settling Defendants are required under this Consent Decree to pay $530,000 into an escrow account which will be used by the performing defendants to conduct and finance the removal action. In exchange, the United States will provide a covenant not to sue and contribution protection to all six of the Defendants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Burlington Northern and Santa Fe Railway Company et al.,* D.J. Ref. 90–11–3–08035.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Missouri, 400 East Ninth St., Room 5510, Kansas City, MO, 64106, and at U.S. EPA Region 7, 901 North Fifth St., Kansas City, Kansas, 66101. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.50 (25 cents per page reproduction cost, without attachments) payable to the United States Treasury for payment.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–9094 Filed 4–21–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *The Moulis Corporation d/b/a Fox Lake Harbor Marina, and Joseph F. Moulis III,* Case No. 04 C 616, was lodged with the United States District Court for the Northern District of Illinois on April 15, 2004. This proposed Consent Decree concerns a complaint filed by the United States against the Defendants pursuant to Section 301(a) of the Clean Water Act ("CWA''), 33 U.S.C. 1311(a) and Section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 403 ("RHA''), to obtain injunctive relief from and impose civil penalties against the Defendants for filling wetlands on their property without a permit and for installing a boat ramp and associated structures in Fox Lake without a permit.

The proposed Consent Decree prohibits mowing, cutting, clearing, cultivating, dredging, excavating, farming, filling, dewatering, draining or otherwise disturbing in any manner whatsoever the wetland impact area, and requires removal of all fill material from the wetland impact area, and either removal of the ramp and associated structures or the purchase and abandonment of another ramp on Fox Lake. The Consent Decree also requires payment of a civil penalty, and requires payment to a wetland restoration fund.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Kurt Lindland, Assistant United States Attorney, United States Attorney's Office, 5th Floor, 219 S. Dearborn Street, Chicago, Illinois 60604 and refer to *United States* v. *The Moulis Corporation*

d/b/a Fox Lake Harbor Marina, and Joseph F. Moulis III, Case No. 04 C 616, including the USAO #2003V000633.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/open.html.*

Kurt N. Lindland,

Assistant United States Attorney.

[FR Doc. 04–9091 Filed 4–21–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Under section 122(i) of CERCLA, 42 U.S.C 9622(i), and 28 CFR 50.7 notice is hereby given that on April 7, 2004, a proposed Consent Decree (''Decree'') in *United States* v. *GTE Operations Support Incorporated et al*, Civil Action No. 04–1644 was lodged with the United States District Court for the District of New Jersey.

In this action the United States seeks to recover past costs with respect to the A.O. Polymer Superfund Site located in Sparta Township, Sussex County, New Jersey (the ''Site''), as well as a declaratory judgment of liability with respect to future costs to be incurred by the United States at the Site. Pursuant to the terms of the proposed Decree, the three de minimis defendants have agreed to pay the United States $81,667.30 within 30 days of the Court's entry of the Decree, plus interest on this amount at the CERCLA rate of interest if they fail to pay the amount within the 30 days. The United States will also provide the defendants with a covenant not to sue, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with regard to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *GTE Operations Support Incorporated et al*, D.J. Ref. 90–11–07174.

The Decree may be examined at the Office of the United States Attorney, 970 Broad Street, Suite 700, and at U.S. EPA Region 2, 290 Broadway New York, New York. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Decree may further be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–9095 Filed 4–21–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with departmental policy, notice is hereby given that on April 13, 2004, a proposed consent decree in the case captioned *United States of America* v. *Kerr-McGee Chemical LLC,* Civil Action No. 04 C 2001 (N.D. Illinois), was lodged with the United States District Court for the Northern District of Illinois.

In this action, the United States sought recovery under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9606, 9607(a), against Kerr-McGee Chemical LLC (''Kerr-McGee'') for past costs incurred in connection with the Lindsay Light II Superfund Removal Site (''Site'') in Chicago, Illinois. The proposed consent decree would resolve the past cost claims at four of the operable units at the Site. Under the proposed consent decree, Kerr-McGee will pay the United States $640,000 in exchange for a covenant not to sue for past costs on those four operable units.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resource Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Kerr-McGee Chemical LLC,* Civil Action No. 04 C 2001 (N.D. Illinois), and DOJ Reference No. 90–11–3–1313/2.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, 219 South Dearborn St., Chicago, IL 60604, and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–9092 Filed 4–21–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: application for Federal Firearms License.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, (202) 616–1167.

Correction

In the **Federal Register** issue of March 3, 2004, in FR Doc. 04–4773, on page 10062, the Department of Justice published a 60-day notice for an information collection for the Bureau of Alcohol, Tobacco, Firearms and Explosives. This collection has been revised. In the Action line, the revised title should read ''Application for Federal Firearms License''. The following identified items in the section labeled ''Overview of this information collection'' should read:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Federal Firearms License.

(3) No Change.

(4) The form is used when applying for a Federal firearms license as a dealer, importer, or manufacturer. The information requested on the form establishes eligibility for the license. The information collection has been revised and among the changes are the option to pay the fee for the license by credit card, the title and estimated burden.

(5) Estimated 6,200 respondents.

(6) Estimated 7,750 total annual burden hours.

Dated: April 16, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–9125 Filed 4–21–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 13, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Revision of a currently approved collection.

Title: Employment Information Form.

OMB Number: 1215–0001.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit; Farms; Federal Government; State, local or tribal government.

Number of Respondents: 35,000.

Number of Annual Responses: 35,000.

Estimated Time per Response: 20 minutes.

Burden Hours Total: 11,667.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This form is an optional form used by complainants and others to provide information about alleged violations of the labor standards provisions of the Fair Labor Standard Act. The form is provided both in the English and Spanish languages. The form is used not only by current employees of a firm but by anyone alleging violations by a firm, including former employees, competitor employer, unions, *etc.* The form is completed by the complainants themselves or by a Wage and Hour Investigator using information provided by the complainants either in person or over the telephone. The completed form is examined by a Wage and Hour Investigator to obtain information about employer compliance with the provisions of the various labor standards laws enforced by the Division and to determine if the Division has jurisdiction to investigate the alleged violation.

When a violation is suspected and an investigation is scheduled, the completed Form WH–3 is made a part of the investigation case file. Without the information provided, it would be extremely difficult to determine the potentiality of employer violations and scheduled effective enforcement activities.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–9120 Filed 4–21–04; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 13, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Medical Travel Refund Request.

OMB Number: 1215–0054.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 52,221.

Number of Annual Responses: 52,221.

Estimated Time Per Response: 10 minutes.

Burden Hours Total: 8,669.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $21,000.

Description: This collection is used by the Office of Workers' Compensation Programs (OWCP) and contractor bill processing staff to process reimbursement requests for travel expenses. To enable OWCP and its contractor bill processing staff to consider the appropriateness of the request in a timely fashion, it is essential the request include all of the data elements needed to evaluate the request. If all the data elements required by OWCP are not collected, the contractor staff cannot process the request for reimbursement.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–9121 Filed 4–21–04; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 15, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: New collection.

Title: Local Area Survey for the Evaluation of the WIA Performance Measurement System.

OMB Number: 1205–0NEW.

Frequency: One time.

Affected Public: State, local or tribal government.

Number of Respondents: 605.

Number of Annual Responses: 605.

Estimated Time Per Response: 2 hours.

Burden Hours Total: 1,210.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Department of Labor is seeking the Office of Management and Budget approval to collect data from Local Workforce Investment Areas on the performance measurement system enacted under the Workforce Investment Act. The data will be used to identify areas of concern with the current system and to inform the design of future data collection and performance measurement systems.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–9122 Filed 4–21–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Review; Comment Request

April 12, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Maintenance of Receipts for Benefits Paid by a Coal Mine Operator.

OMB Number: 1215–0124.

Frequency: On Occasion.

Affected Public: Business or other for-profit; State, local or tribal government.

Number of Respondents: 140.

Number of Annual Responses: 140.

Burden Hours Total: 1 hour.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Insurance carriers and self-insured coal mine operators are required to maintain cancelled checks for five years in order to verify payment of black lung benefits. Verification may become necessary since benefit

payments made by an operator or carriers are paid directly to the person entitled to benefits or to a representative payee, if authorized.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–9123 Filed 4–21–04; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–054]

National Environmental Policy Act; Mars Exploration Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft programmatic environmental impact statement (DPEIS) for implementation of the Mars Exploration Program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared and issued a DPEIS for the Mars Exploration Program (MEP). The DPEIS addresses the potential environmental impacts associated with continuing the preparations for and implementing the program.

The MEP would be a science-driven, technology-enabled effort to characterize and understand Mars using an exploration strategy, which focuses on evidence of the presence of water. Following the pathways and cycles of water may lead to preserved ancient records of biological processes, as well as the character of environments on Mars. The Proposed Action addresses the preparation for and implementation of a coordinated series of robotic orbital, surface, and atmospheric missions to gather scientific data on Mars and its environments through 2020. Continued planning for sample return missions, which would enable study of Martian samples in Earth-based laboratories, would be included. Some MEP missions could use radioisotope power systems (RPSs) for electricity, radioisotope heater units (RHUs) for thermal control, and small quantities of radioisotopes in science instruments for experiments and instrument calibration. Environmental impacts associated with specific missions would be addressed in subsequent environmental documentation, as appropriate. Missions launched from the United States would originate from either Cape Canaveral Air Force Station (CCAFS), Florida or Vandenberg Air Force Base (VAFB), California.

DATES: Interested parties are invited to submit comments on environmental concerns on or before June 7, 2004, or 45 days from the date of publication in the **Federal Register** of the EPA notice of availability of the MEP DPEIS, whichever is later.

ADDRESSES: Comments submitted via first class, registered, or certified mail should be addressed to Mark R. Dahl, Office of Space Science, Mail Code SM, NASA Headquarters, Washington, DC 20546–0001. Comments submitted via express mail, a commercial deliverer, or courier service should be addressed to Mark R. Dahl, Office of Space Science, Mail Code SM, Attn: Receiving & Inspection (Rear of Building), NASA Headquarters, 300 E Street SW., Washington, DC 20024–3210. While hard copy comments are preferred, comments by electronic mail may be sent to *mep.nepa@hq.nasa.gov*. The DPEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546.

(b) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

In addition, the DPEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(c) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181).

(d) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–258–3449).

(e) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(f) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–6255).

(g) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(h) NASA, Kennedy Space Center, FL 32899 (321–867–9280).

(i) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–2030).

(k) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited hard copies of the DPEIS are available, on a first request basis, by contacting Mark R. Dahl at the address or telephone number indicated herein. The DPEIS also is available in Acrobat® format at *http://spacescience.nasa.gov/admin/pubs/mepdpeis/index.htm*.

FOR FURTHER INFORMATION CONTACT: Mark R. Dahl, Office of Space Science, Mail Code SM, NASA Headquarters, Washington, DC 20546–0001, telephone 202–358–4800, or electronic mail *mep.nepa@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION: With the MEP, NASA would establish a series of objectives to address the open scientific questions associated with the exploration of Mars. These objectives have been organized by the program as follows:

—Determine if life exists or has ever existed on Mars,

—Understand the current state and evolution of the atmosphere, surface, and interior of Mars, and

—Develop an understanding of Mars in support of possible future human exploration.

The purpose of the action addressed in the DPEIS is to further the scientific goals of the MEP by continuing the exploration and characterization of the planet. On the basis of the knowledge gained from prior and ongoing missions (*i.e.*, the early Mariners, Viking, Mars Pathfinder, Mars Global Surveyor, and Mars Odyssey), it appears that Mars, like Earth, has experienced dynamic interactions among its atmosphere, surface, and interior that are, at least in part, related to water. Following the pathways and cycles of water has emerged as a strategy that possibly may lead to a preserved record of biological processes, as well as the character of ancient environments on Mars. In addition to understanding the history of Mars, investigations undertaken in the MEP may shed light on current environments that could support existing biological processes.

The Proposed Action (Alternative 1) would consist of a long-term program that, as a goal, sends at least one spacecraft to Mars during each launch opportunity extending through the first two decades of the twenty-first century. Efficient launch opportunities to Mars occur approximately every 26 months. MEP missions would be launched on expendable launch vehicles (*e.g.*, Delta or Atlas class) from either CCAFS, Florida, or VAFB, California.

International participation in the MEP could include, but not be limited to, the Canadian Space Agency, the European Space Agency (ESA), the French Space Agency, the German Space Agency, the Italian Space Agency, and the Russian Space Agency. The MEP could include international missions in which NASA

proposes to be a participant that are to be launched from a foreign site. Under the Proposed Action, the MEP would consist of a series of robotic orbital, surface, and atmospheric missions to Mars. Some spacecraft could use RPSs for continuous electrical power, RHUs for thermal control, and small quantities of radioisotopes in science instruments for experiments and instrument calibration.

At this time, it is envisioned that the MEP missions through the first decade would consist of the following:

—NASA's Mars Odyssey orbiter, which was launched on April 7, 2001, and is currently in orbit about Mars.

—NASA's Mars Exploration Rovers project, which consists of two missions that sent two identical rovers to two different sites on the surface of Mars. Spirit and Opportunity were launched in June and July 2003, respectively, and successfully landed on Mars in January 2004. Both rovers are currently operating on Mars.

—ESA's Mars Express mission, which consists of an orbiter and the Beagle 2 lander, launched in June 2003. Mars Express successfully entered orbit at Mars on December 25, 2003 (Beagle 2 was deemed lost after attempts to communicate with it failed after the scheduled landing on December 25).

—NASA's Mars Reconnaissance Orbiter, which is proposed for launch in 2005, and is intended to narrow the focus of potential landing sites to search for the most compelling indicators for bearing life.

—A series of small, narrowly focused missions, called Mars Scouts, is currently proposed to explore Mars at every other launch opportunity beginning in 2007. The first Mars Scout mission, a lander called Phoenix, would be launched during this opportunity.

—NASA's Mars Science Laboratory (MSL), proposed for launch in 2009, would conduct surface and sub-surface investigations to examine the aqueous history of Mars and search for potential building blocks of life. The MSL could utilize a RPS to provide uninterrupted electrical power. NASA also proposes to launch a Mars Telecommunications Orbiter during the 2009 opportunity.

—A second Mars Scout mission is proposed for launch during the 2011 opportunity.

Missions beyond 2011 could use orbiters, rovers, and landers and could include the first mission to return Martian samples. As new information and techniques become available during the course of the program, the timing, focus, and objectives of MEP missions in the second decade could be redirected.

Alternatives to the Proposed Action evaluated in the DPEIS include the following:

—Under Alternative 2, NASA would continue to explore Mars through 2020, but on a less frequent, less comprehensive, mission-by-mission basis. These missions may include international partners. Any mission proposed to continue the exploration of Mars would be developed and launched within the broader context of all other missions proposed for exploring other parts of the solar system. Robotic orbital, surface, and atmospheric missions could be used to explore Mars and could include sample return missions. Landed spacecraft could use RPSs for power generation or RHUs for thermal control of temperature-sensitive components in the spacecraft. Some spacecraft may carry small quantities of radioisotopes in science instruments for experiments and for instrument calibration.

—Under the No Action Alternative, NASA would discontinue planning for and launching robotic missions to Mars through 2020. Currently operating NASA spacecraft at or en route to Mars would continue their missions to completion. New science investigations of Mars would only be made remotely from Earth-based assets, *i.e.*, ground- or space-based observatories, or from spacecraft developed and launched to Mars by non-U.S. space agencies.

The environmental impacts of the Proposed Action and Alternatives are discussed in the DPEIS from a programmatic perspective. Because the DPEIS is being prepared during the planning stages for the MEP, specific proposed projects and missions within the MEP are only addressed in terms of a broad, conceptual framework. Each project or mission within the MEP that would propose use of RPSs or RHUs would be the subject of additional environmental documentation. While detailed analyses and test data for each spacecraft-launch vehicle combination are not yet available, there is sufficient information from previous programs and existing NEPA documentation to assess the potential environmental impacts.

A major component of the MEP is continued planning for one or more missions that would return samples from Mars. At the time of publication of the DPEIS, preliminary concepts for a sample return mission are being studied and would continue to be refined and evaluated. A sample return mission would be the subject of separate environmental documentation, as would the location, design and operational requirements for a returned-sample receiving facility. NASA may also propose to participate in international missions to Mars to be launched from foreign locations. In such an event, NASA will prepare environmental documentation in accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. The non-radiological environmental impacts associated with normal spacecraft launches from both CCAFS and VAFB have been addressed in previous U.S. Air Force and NASA environmental documentation. Rocket launches are discrete events that cause short-term impacts on local air quality. However, because launches are relatively infrequent events, and winds rapidly disperse and dilute the launch emissions to background concentrations, long-term effects from exhaust emissions would not be anticipated. If solid rocket motors are used, surface waters in the immediate area of the exhaust cloud might temporarily acidify from deposition of hydrogen chloride. Launching a mission during each opportunity to Mars (approximately every 26 months) under the Proposed Action or less frequently under Alternative 2 would result in negligible release of ozone-depleting chemicals with no anticipated long-term cumulative impacts.

One or more of the missions to Mars could propose the use of radioisotopes under the Proposed Action and Alternative 2. Small quantities of radioisotopes may be used for instrument calibration or to enable science experiments, and RHUs or RPSs containing varying amounts of plutonium dioxide may be used to supply heat and electric power, respectively. Under both alternatives NASA will determine the appropriate level of NEPA documentation required for any mission proposing use of radiological material. If required, a nuclear risk assessment will be developed by the U.S. Department of Energy to address the human health and environmental risks associated with the use of radioactive material. Many of the parameters that determine the risks for a specific mission are expected to be similar to those associated with previous missions (*e.g.*, Galileo, Ulysses, Cassini, and the Spirit and Opportunity rovers). Mission-specific factors that affect the estimated risk include the

amount and type of radioactive material used in a mission, the protective features of the devices containing the radioactive material, the probability of an accident which can damage the radioactive material, and the accident environments (*e.g.*, propellant fires, debris fragments, and blast overpressure). The risks associated with a Mars exploration mission carrying radioactive material are, therefore, expected to be similar to those estimated for earlier missions. The population and individual risks associated with prior missions that have made use of radioactive material have all been shown to be relatively small.

Any person, organization, or governmental body or agency interested in receiving a copy of NASA's Record of Decision after it is rendered should so indicate by mail or electronic mail to Mr. Dahl at the addresses provided above.

Jeffrey E. Sutton,

Assistant Administrator for Institutional and Corporate Management.

[FR Doc. 04–9133 Filed 4–21–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–053]

National Environmental Policy Act; Development of Advanced Radioisotope Power Systems

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare a Tier I Environmental Impact Statement (EIS) and to conduct scoping for the development of advanced Radioisotope Power Systems.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA's policy and procedures (14 CFR subpart 1216.3), NASA intends to conduct scoping and to prepare a Tier I EIS for the development of advanced Radioisotope Power Systems (RPSs). NASA, in cooperation with the U.S. Department of Energy (DOE), proposes to develop in the near-term two types of advanced RPSs to satisfy a wide of range of future space exploration mission requirements. These advanced RPSs would both be capable of functioning in the vacuum of space and in the environments encountered on the surfaces of planets, moons and other solar system bodies. These new power systems would be based upon a modified version of the General Purpose Heat Source (GPHS) previously developed by DOE and used in the Radioisotope Thermoelectric Generators (RTGs) for NASA's Galileo, Ulysses, and Cassini missions. This modification would add additional graphite material to the graphite aeroshell. The GPHS-based advanced RPSs would be capable of providing long-term, reliable electrical power to spacecraft across the range of conditions encountered in space and planetary surface missions.

The Tier 1 EIS will also address in general terms the development and qualification for flight of advanced RPSs that use passive or dynamic systems to convert the heat generated from the decay of plutonium to electrical energy, and related long-term research and development of technologies that could further enhance the capability of future RPS systems. The Multi-Mission Radioisotope Thermoelectric Generator (MMRTG) and Stirling Radioisotope Generator (SRG) development activity would include, but not necessarily be limited to: (1) New power conversion technologies to more efficiently use the heat energy from the GPHS module, and (2) improving the versatility of the RPS so that it would be capable of operating for extended periods in the vacuum of space and in planetary atmospheres. Specific future developments of a new generation of space qualified RPSs (*e.g.*, more efficient systems than the proposed MMRTG or SRG, or systems with smaller electrical power output) would be the subject of separate Tier II environmental documentation.

DOE will be a cooperating agency in the preparation of this Tier 1 EIS.

DATES: Interested parties are invited to submit comments on environmental concerns in writing on or before June 7, 2004, to assure full consideration during the scoping process.

ADDRESSES: Comments should be addressed to Dr. George Schmidt, NASA Headquarters, Code S, Washington, DC 20546–0001. While hardcopy comments are preferred, comments may be sent by electronic mail to: rpseis@nasa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. George Schmidt, NASA Headquarters, Code S, Washington, DC 20546–0001, by telephone at 202–358–0113, or by electronic mail at *rpseis@nasa.gov*.

SUPPLEMENTARY INFORMATION: NASA's future scientific exploration of the solar system is planned to include missions throughout the solar system and potential missions to the surfaces of planets, moons and other planetary bodies. Many of these missions cannot be accomplished with current energy production and storage technologies available to NASA, such as batteries, solar arrays, fuel cells, and the existing radioisotope power system (the GPHS RTG). To enable this broad range of missions, NASA is proposing to develop in the near-term, two types of RPSs capable of functioning both in the vacuum of space and in the environments encountered on the surfaces of planets, moons and other planetary bodies.

NASA proposes to develop these advanced RPSs to enable missions with substantial longevity, flexibility, and greater scientific exploration capability. Some possibilities are:

- Comprehensive and detailed planetary investigations and creating comparative data sets of the outer planets—Jupiter, Saturn, Uranus, Neptune and Pluto and their moons. The knowledge gained with these data sets would be vital to understanding other recently discovered planetary systems and general principles of planetary formation.
- Comprehensive exploration of the surfaces and interiors of comets, possibly including returned samples to better understand the building blocks of our solar system and ingredients contributing to the origin of life.
- Expanded capabilities for surface and on-orbit exploration, and sample return missions to Mars and other planetary bodies (including the Earth's moon) to greatly improve our understanding of planetary processes, particularly those affecting the potential for life.

The current DOE radioisotope power system, the GPHS RTG, does not meet these new or evolving mission requirements. The heat-to-electricity converter for the existing RTG produces about 285 watts of electrical power, but it is not designed to perform for an extended period in planetary atmospheres such as that on Mars. The two new proposed types of RPSs would be developed to meet the diverse needs of future NASA space exploration missions.

Near-term advanced RPS development would focus on two power systems, the MMRTG and the SRG. The MMRTG would build upon the spaceflight-proven passive thermoelectric power conversion technology incorporating improvements to allow extended operation in planetary atmospheres. For the SRG, NASA would develop a new space-qualified dynamic power conversion system, a Stirling engine, that would more efficiently convert the heat from

the decay of plutonium into electrical power and therefore use less plutonium to generate comparable amounts of electrical power. Both of these systems would provide up to about 100 watts of electric power and would be capable of functioning both in the vacuum of space and in the environments encountered on the surfaces of the planets, moons and other bodies. Differences in SRG and MMRTG mechanical and thermal interfaces would allow a broad range of mission specific spacecraft designs. More than one MMRTG or SRG could be integrated with a spacecraft to provide power levels exceeding 100 watts electrical.

This Tier I EIS will address in broad terms the technology development activities of NASA, DOE, and the industrial contractors involved in:

- Development and testing of advanced RPSs through final design, testing, and fabrication of flight qualified SRGs and MMRTGs, and
- Long-term research and development of technologies that could enhance the capabilities of future radioisotope power systems (*e.g.*, systems that convert heat into electricity more efficiently and smaller systems).

It is anticipated that development and test activities involving use of radioisotopes would be performed at existing DOE sites that currently perform similar activities. Fuel processing and fabrication would likely occur at existing facilities at Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico, which are currently used for the fabrication of the fuel for the GPHS modules. Advanced RPS assembly and testing would likely be performed at Argonne National Laboratory—West (west of Idaho Falls, Idaho). These activities were previously carried out at DOE's Mound, Ohio facility. Additional safety testing of an integrated advanced RPS could be performed at one or more of several existing facilities; including DOE facilities such as LANL and Sandia National Laboratory (Albuquerque, New Mexico) or the U.S. Army's Aberdeen Proving Grounds (Aberdeen, Maryland). Activities associated with the development, testing, and verification of the power conversion systems could be performed at several existing facilities including some NASA facilities (Glenn Research Center at Lewis Field, Cleveland, Ohio; and the Jet Propulsion Laboratory, Pasadena, California) and several commercial facilities (Boeing Rocketdyne, Canoga Park, California; Teledyne Energy Systems, Hunt Valley, Maryland; Stirling Technology Corporation, Kennewick, Washington; and Lockheed Martin, Valley Forge, Pennsylvania).

NASA plans to address the environmental impacts of the development and use of Advanced RPSs through a two-tiered NEPA process. This Tier I EIS will address the proposed development, overall purpose and need for the development of advanced RPSs, development, testing and fabrication of the MMRTG and SRG. This Tier 1 EIS will also address proposed research and development work regarding technologies that could further enhance the capabilities of future RPSs. Specific future developments of a new generation of space qualified RPSs (*e.g.*, more efficient systems than the proposed MMRTG or SRG, or systems with smaller electrical power output) would be the subject of separate Tier II environmental documentation, as appropriate, using the most pertinent data and analysis directly related to those developments. Mission-specific use of any of these RPSs would be subject to separate environmental documentation.

Alternatives to be considered in this Tier I EIS will include, but will not necessarily be limited to the No Action Alternative, by which NASA would not pursue development of advanced RPSs.

Written public input and comments on alternatives and environmental impacts, and concerns associated with the development of advanced RPSs are hereby requested.

Jeffrey E. Sutton,

Assistant Administrator for Institutional and Corporate Management.

[FR Doc. 04–9131 Filed 4–21–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–055]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that StarGate Research, Inc., of Denver, CO, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 6,354,540 identified as Case No. MSC–22931–1, and entitled ''Androgynous, Reconfigurable Closed Loop Feedback Controlled Low Impact Docking System With Load Sensing Electromagnetic Capture Ring.'' The patent is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by May 7, 2004.

FOR FURTHER INFORMATION CONTACT: Theodore Ro, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 244–7148.

Dated: April 19, 2004.

Keith T. Sefton,

Chief of Staff, Office of the General Counsel.

[FR Doc. 04–9132 Filed 4–21–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Determination of the Chairman of the National Endowment for the Arts as to Certain Advisory Committees: Public Disclosure of Information and Activities

The National Endowment for the Arts utilizes advice and recommendations of advisory committees in carrying out many of its functions and activities.

The Federal Advisory Committee Act, as amended (Pub. L. 92–463), governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government. Section 10 of the act specifies that department and agency heads shall make adequate provisions for participation by the public in the activities of advisory committees, except to the extent a determination is made in writing by the department or agency head that a portion of an advisory committee meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code (the Government in the Sunshine Act).

It is the policy of the National Endowment for the Arts to make the fullest possible disclosure of records to the public, limited only by obligations of confidentiality and administrative necessity. Consistent with this policy, meetings of the following Endowment advisory committees will be open to the public except for portions dealing with the review, discussion, evaluation, and/or ranking of grant applications: Combined Arts, Fellowships, Leadership Initiatives, Partnership, Special Projects, and the Federal Advisory Committee on International Exhibitions.

The portions of the meetings involving the review, discussion, evaluation and ranking of grant applications may be closed to the public for the following reasons:

The Endowment Advisory Committees listed above review and discuss applications for financial assistance. While the majority of applications received by the agency are submitted by organizations, all of the applications contain the names of and personal information relating to individuals who will be working on the proposed project. In reviewing the applications, committee members discuss the abilities of the listed individuals in their fields, the reputations of the listed individuals among their colleagues, the ability of the listed individuals to carry through on projects they start, and their background and performance. Consideration of these matters is essential to the review of the artistic excellence and artistic merit of an application.

Consequently, in the interest of meeting our obligation to consider artistic excellence and artistic merit when reviewing applications for financial assistance:

It is hereby determined in accordance with the provisions of section 10(d) of the Act that the disclosure of information regarding the review, discussion, and evaluation of applications for financial assistance as outlined herein is likely to disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Therefore, in light of the above, I have determined that the above referenced meetings or portions thereof, devoted to review, discussion, evaluation, and/or ranking of applications for financial assistance may be closed to the public in accordance with subsection (c)(6) of section 552b of title 5, United States Code.

The staff of each committee shall prepare a summary of any meeting or portion not open to the public within three (3) business days following the conclusion of the meeting of the National Council on the Arts considering applications recommended by such committees. The summaries shall be consistent with the considerations that justified the closing of the meetings.

All other portions of the meetings of these advisory committees shall be open to the public unless the Chairperson of the National Endowment for the Arts or a designee determines otherwise in accordance with section 10(d) of the Act.

The Panel Coordinator shall be responsible for publication in the **Federal Register** or, as appropriate, in local media, of a notice of all advisory committee meetings. Such notice shall be published in advance of the meetings and contain:

1. Name of the committee and its purposes;

2. Date and time of the meeting, and, if the meeting is open to the public, its location and agenda; and

3. A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

The Panel Coordinator is designated as the person from whom lists of committee members may be obtained and from whom minutes of open meetings or open portions thereof may be requested.

Guidelines

Any interested person may attend meetings of advisory committees that are open to the public.

Members of the public attending a meeting will be permitted to participate in the committee's discussion at the discretion of the chairperson of the committee, if the chairperson is a full-time Federal employee; if the chairperson is not a full-time Federal employee then public participation will be permitted at the chairperson's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

Dated: April 14, 2004.

Dana Gioia,

Chairman, National Endowment for the Arts.

[FR Doc. 04–9089 Filed 4–21–04; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Determination of the Chairperson of the National Endowment for the Arts Regarding Potential Closure of Portions of Meetings of the National Council on the Arts

Section 6(f) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*) authorizes the National Council on the Arts to review applications for financial assistance to the National Endowment for the Arts and make recommendations to the Chairperson.

The Federal Advisory Committee Act (FACA), as amended (Pub. L. 92–463) governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise the Federal Government. Section 10 of that Act directs meetings of advisory committees to be open to the public, except where the head of the agency to which the advisory committee reports determines in writing that a portion of a meeting may be closed to the public consistent with subsection (c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act.)

It is the policy of the National Endowment for the Arts that meetings of the National Council on the Arts be conducted in open session, including those parts during which applications are reviewed. However, in recognition that the Endowment is required to consider the artistic excellence and artistic merit of applications for financial assistance and that consideration of individual applications may require a discussion of matters such as an individual artist's abilities, reputation among colleagues, or professional background and performance, I have determined to reserve the right to close limited portions of Council meetings if such information is to be discussed. The purpose of the closure is to protect information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure for this purpose is authorized by subsection (c)(6) of section 552b of Title 5 United States code.

Additionally, at one of its meetings, the Council will consider prospective nominees for the National Medal of Arts award in order to advise the President of the United States in his final selection of National Medal of Arts recipients. During this session, similar information of a personal nature will be discussed. As with applications for financial assistance, disclosure of this information about individuals who are under consideration for the award would constitute a clearly unwarranted invasion of personal privacy.

Therefore, in light of the above, I have determined that the portion of the July 2004 Council meeting, devoted to consideration of prospective nominees for the National Medal of Arts award, may be closed to the public. Closure for these purposes is authorized by subsections (c)(6) of section 552b of Title 5, United States Code. A record shall be maintained of any closed portion of the Council meeting. Further, in accordance with the FACA, a notice of any intent to close any portion of the Council meeting will be published in the **Federal Register**.

Dated: April 14, 2004.

Dana Gioia, Chairman,

National Endowment for the Arts.

[FR Doc. 04–9090 Filed 4–21–04; 8:45 am]

BILLING CODE 7536–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 69 FR 20954, April 19, 2004.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, April 20, 2004, at 10:30 a.m.

CHANGE IN THE MEETING: Deletion of Item/Additional Item.

The following item was not considered during the Closed Meeting on April 20, 2004: An adjudicatory matter.

The following item was added to the Closed Meeting of April 20, 2004: Litigation matter.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: April 20, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–9343 Filed 4–20–04; 3:59 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 26, 2004: An Open Meeting will be held on Wednesday, April 28, 2004 at 2:30 p.m. in Room 6600. A Closed Meeting will be held on Thursday, April 29, 2004 at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Open Meeting scheduled for Wednesday, April 28, 2004 will be:

1. The Commission will consider whether to propose new rule 202(a)(11)–2 under the Investment Advisers Act of 1940 (''Advisers Act''). The proposed rule would except thrift institutions from the Advisers Act when they provide investment advice (1) as trustee, executor, administrator, or guardian to trusts, estates, guardianships or other fiduciary accounts and (2) to their collective trust funds that are excepted from the Investment Company Act of 1940. The Commission will also consider whether to propose new rule 12g–6 under the Securities Exchange Act of 1934 to exempt thrift-sponsored collective trust funds from registration and reporting requirements under that Act.

For further information, please contact Robert Tuleya, Attorney, Division of Investment Management, at (202) 942–0719.

2. The Commission will consider whether to propose new and amended rules and forms to address the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 (''Securities Act'') and the Securities Exchange Act of 1934(''Exchange Act''). The proposals relate to four primary regulatory areas: Securities Act registration; disclosure requirements; communications during the offering process; and ongoing reporting under the Exchange Act.

For further information, please contact Jeffrey J. Minton, Special Counsel, or Jennifer G. Williams, Attorney-Advisor, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910.

3. The Commission will consider whether to adopt rule amendments and new rules under the Securities Exchange Act of 1934 (''Exchange Act'') that would establish two separate voluntary regulatory programs for the Commission to supervise broker-dealers and their affiliates on a consolidated basis.

One program would establish an alternative method to compute certain net capital charges for broker-dealers that are part of a holding company that manages risks on a group-wide basis and whose holding company consents to group-wide Commission supervision. The broker-dealer's holding company and its affiliates, if subject to Commission supervision, would be referred to as a ''consolidated supervised entity'' or ''CSE.'' Under the alternative capital computation method, the broker-dealer would be allowed to compute certain market and credit risk capital charges using internal mathematical models. The CSE would be required to comply with rules regarding its group-wide internal risk management control system and would be required periodically to provide the Commission with consolidated computations of allowable capital and risk allowances (or other capital assessment) prepared in a form that is consistent with the Basel Standards. Commission supervision of the CSE would include recordkeeping, reporting, and examination requirements. The requirements would be modified for an entity with a principal regulator.

The other program would implement section 17(i) of the Exchange Act, which created a new structure for consolidated supervision of holding companies of broker-dealers, or ''investment bank holding companies'' (''IBHCs'') and their affiliates. Pursuant to the Exchange Act, an IBHC that meets certain, specified criteria may voluntarily register with the Commission as a supervised investment bank holding company (''SIBHC'') and be subject to supervision on a group-wide basis. Registration as an SIBHC is limited to IBHCs that are not affiliated with certain types of banks and that have a substantial presence in the securities markets. The rules would provide an IBHC with an application process to become supervised by the Commission as an SIBHC, and would establish regulatory requirements for those SIBHCs. Commission supervision of an SIBHC would include recordkeeping, reporting and examination requirements. Further, the SIBHC also would be required to comply with rules regarding its group-wide internal risk management control system and would be required periodically to provide the Commission with consolidated computations of allowable capital and risk allowances (or other capital assessment) consistent with the Basel Standards.

Both programs would also include technical and conforming amendments to the risk assessment rules (Exchange Act Rules 17h–1T and 17h–2T).

For further information, please contact Lourdes Gonzalez at (202) 942–0098, Linda Stamp Sundberg at (202) 942–0073, Bonnie Gauch at (202) 942–0765, Rose Wells at (202) 942–0143, or Matt Comstock at (202) 942–0156.

The subject matter of the Closed Meeting scheduled for Thursday, April 29, 2004 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Consideration of amicus participation; an adjudicatory matter; and an Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: April 20, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–9344 Filed 4–20–04; 3:59 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49573; File No. SR–NASD–2003–95]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change Relating to Arbitrator Classification and Disclosure in NASD Arbitrations

April 16, 2004.

I. Introduction

On June 12, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), 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 to amend certain sections of the NASD Code of Arbitration Procedure (''Code'') relating to arbitrator classification and disclosure in NASD arbitrations. The proposed rule change was published for comment in the **Federal Register** on August 21, 2003.[3] The Commission received eight comment letters on the proposal.[4] NASD submitted two letters in response to these comments.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Under the proposal, Rules 10308 and 10312 of the Code would be amended to: (1) Modify the definitions of public and non-public arbitrators; (2) provide specific standards for deciding challenges to arbitrators for cause; and (3) clarify that compliance with arbitrator disclosure requirements is mandatory.

Specifically, the proposed rule change would amend the definition of non-public arbitrator in Rule 10308(a)(4) of the Code to: (1) Increase from three years to five years the period for transitioning from an industry to public arbitrator; and (2) clarify that the term ''retired'' from the industry includes anyone who spent a substantial part of his or her career in the industry.

In addition, the proposed rule change would amend the definition of public arbitrator in Rule 10308(a)(5)(A) of the Code to: (1) Prohibit anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how many years ago the association ended; (2) exclude from the definition of public arbitrator, attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator; and (3) provide that investment advisers may not serve as public arbitrators and may only serve as non-public arbitrators if they otherwise qualify under Rule 10308(a)(4) of the Code. The proposed rule change would also amend the definition of ''immediate family member'' in Rule 10308(a)(5)(B) of the Code to add parents, children, stepparents, stepchildren, as well as any member of the arbitrator's household.

The proposed rule change would also amend Rules 10308(d) and 10312(d) of the Code to provide that a challenge for cause will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. In addition, the proposal would amend Rule 10308 of the Code to add a new paragraph (f) which would provide that close questions regarding arbitrator classification or challenges for cause brought by a public customer would be resolved in favor of the customer. Lastly, NASD proposed to amend Rule 10312(a) and (b) of the Code to clarify that arbitrators must disclose the required information and must make reasonable efforts to inform themselves of potential conflicts and update their disclosures as necessary.

III. Summary of Comments

As noted above, The Commission received eight comment letters on the proposal.[6] NASD submitted two letters in response to these comments.[7]

PIABA supported the proposal as a ''positive and significant step toward the elimination of the appearance of pro-industry bias in the roster of those eligible to sit as 'public' arbitrators in NASD arbitrations.[8] PIABA, however, suggested that NASD consider further steps, such as eliminating all banking and insurance personnel from the public arbitrator pool, and categorizing all professional partners of all non-public arbitrators as non-public regardless of whether the partner's firm meets the proposed 10% threshold under Rule 10308(a)(5)(A)(iv) of the Code.[9]

Some commenters believed that the proposed amendments to Rule 10308(a)(5)(A)(iv) of the Code to classify as non-public arbitrators an attorney, accountant or other professional whose firms derived more than 10 percent of its revenue from the industry in the last two years from securities industry clients is too lenient and should go farther.[10] NELA suggested that attorneys whose firm represent industry members

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48347 (August 14, 2003), 68 FR 50563.

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Joseph O'Donnell, dated July 16, 2003 (''O'Donnell Letter''); Cliff Palefsky, Co-Chair, ADR Committee, National Employment Lawyers Association (''NELA''), dated September 9, 2003 (''NELA Letter''); Stephen G. Sneeringer, Senior Vice President and Counsel, A.G. Edwards & Sons, Inc., dated September 9, 2003 (''A.G. Edwards Letter''); Edward Turan, Chair, Securities Industry Association (''SIA'') Arbitration Committee, SIA, dated September 11, 2003 (''SIA Letter''); Charles W. Austin, Jr., Vice-President/President Elect, Public Investor Arbitration Bar Association (''PIABA''), dated September 11, 2003 (''PIABA Letter''); James Dolan, Attorney and Counselor, dated October 8, 2003 (''Dolan Letter''); and Richard P. Ryder, President, Securities Arbitration Commentator, Inc. (''SAC''), dated October 23, 2003 (''SAC Letter''). See also e-mail to *rules-comments@sec.gov* from *ProfLipner@aol.com* dated September 23, 2003 (''Lipner Letter'').

[5] *See* letters to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, from Laura Ganzler, Counsel, NASD, dated September 30, 2003 and February 2, 2004 (''NASD's Response'').

[6] *See supra* note 4.

[7] *See supra* note 5.

[8] *See* PIABA Letter.

[9] *See* PIABA Letter.

[10] *See* NELA Letter, PIABA Letter.

should be classified as non-public arbitrators regardless of the dollar volume of the business because incentive to favor the industry is "too obvious too ignore.''[11]

A.G. Edwards, although generally supportive of the proposed rule change, argued that to exclude from the definition of public arbitrator any "attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years' from any persons or entities involved in the securities industry is too broad.[12] SAC also objected to this exclusion from the definition of public arbitrator.[13] They believed this provision could limit the depth of the NASD arbitrator pool and argue that excluding such persons from serving as public arbitrators is overly broad and not supported by clear evidence that such persons are actually biased in favor of the industry. A.G. Edwards suggested that the possible disclosure of revenue sources by potential arbitrators may also dissuade potential arbitrators from participating.[14] In response, NASD stated that it took this concern into account and has concluded that the amendment, if approved, will not adversely impact its ability to panel cases. NASD also disagrees that the proposed provision unnecessarily excludes categories of persons from serving as public arbitrators. In its response, NASD stated that the new provision is not intended to eliminate only persons with actual bias, but also persons who could reasonably be perceived to be biased. NASD pointed to a report by Professor Michael Perino which noted, "no classification rule could ever precisely define public and non-public arbitrators; there will always be classification questions at the margins about which reasonable people will differ.''[15] Given the inherently imprecise nature of such definitions, NASD stated that to protect both the integrity of the NASD forum, and investors' confidence in the integrity of the forum, it prefers the definition of public arbitrator to be overly restrictive rather than overly permissive.

SAC also questioned why the proposal to exclude from the definition of public arbitrator any "attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years'' from any persons or entities involved in the securities industry differs from a similar provision adopted by the Securities Industry Conference on Arbitration ("SICA''), which would impose a 20% threshold.[16] NASD stated that it carefully considered SICA's proposal. However, NASD stated that the Board of Directors of NASD Dispute Resolution, Inc. and its National Arbitration and Mediation Committee concluded that the proposed rule change would best protect the integrity of the NASD forum from both the reality and perception of impartiality.

In addition, both SIA and A.G. Edwards specifically objected to the use of the terms "professional'' and "firm'' in proposed Rule 10308(a)(5)(A)(iv), which they argue are overly vague and overbroad. In response, NASD stated that it does not believe that the term "professional'' or the term "firm'' would prove to be problematic in practice. NASD noted that the term "professional'' is used elsewhere in current Rule 10308 of the Code and has not been the source of confusion or controversy in the past. NASD sees no reason to believe that the use of the term "professional'' or "firm'' in the proposed provision will be any more problematic in practice than the use of the term "professional'' or the term "business activities'' elsewhere in the rule.

Mr. Dolan and SIA also argue that the proposed amendment to Rule 10308(a)(5)(B)(i) of the Code to include in the definition of family member the parent, child, stepparent, and stepchild of a person in the industry is too broad and would also severely reduce number of competent candidates eligible to serve as public arbitrators.[17] Mr. O'Donnell objected to including an arbitrator's "emancipated sons and daughters engaged in securities related work'' in the proposed definition of family member and stated that this relationship should be disclosed but not be grounds for disqualification from the definition of public arbitrator.[18] In response, NASD stated that the proposed expansion of the definition of "immediate family member'' was developed in light of the Perino Report, which recommended that NASD consider expanding the definition of "immediate family member'' to include parents and children, even if the parent or child does not share a home with or receive substantial support from, a non-public arbitrator.[19] Although the Perino Report referred only to parents and children, NASD believes that the same rationale applies to stepparents and stepchildren and therefore proposed to include such relationships in the definition as well. NASD stated that it believes the expansion of the definition of "immediate family member'' would enhance the overall fairness of NASD's arbitration forum, as well as the investing public's confidence in the fairness and integrity of the forum.

Mr. O'Donnell objected that the proposal excluded investment advisers from the definition of public arbitrators in Rule 10308(a)(5)(iii) of the Code.[20] Mr. O'Donnell further argued that the proposal failed to draw a distinction between "commission based'' and "fee only'' investment advisors and between independent investment advisors and those affiliated with a broker-dealer.[21] In response, NASD noted that the SICA adopted a similar amendment to its Uniform Code of Arbitration. NASD further stated that it believes the pool of qualified public arbitrators will remain deep and that the benefits of bolstering investor confidence in the integrity of the NASD arbitration process outweigh the loss of some individual investment advisers from the roster.

Lastly, Professor Lipner suggested that NASD bar all persons with ties to banks or related institutions from serving as public arbitrators.[22] NASD responded that it believes this suggestion is outside of the current proposal.

IV. Discussion

After careful consideration of the proposed rule change, the comment letters, and NASD's response, 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 association [23] and,

[11] *See* NELA Letter.

[12] *See* A.G. Edwards Letter. *See also* SIA letter. SIA stated that even though it believes the 10 percent threshold to be too low, that such a provision deems as pro-industry any person whose firm meets the 10 percent threshold and that this proposal would remove many members of the plaintiffs' bar employed by firms who represent broker-dealers in employment actions against their employers.

[13] *See* SAC Letter.

[14] *See* A.G. Edwards Letter.

[15] *See* Michael A. Perino, *Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations,* November 4, 2002 ("Perino Report'').

[16] *See* SAC Letter.

[17] *See* Dolan Letter, SIA Letter.

[18] *See* O'Donnell Letter.

[19] *See* Perino Report, *supra* note 15. NASD clarified that when the "immediate family member'' has not been associated with the securities industry for five years, as specified by Rule 10308(a)(4)(A) of the Code, the "immediate family member's'' past affiliation would cease to be a basis to exclude an individual from serving as a public arbitrator pursuant to Rule 10308(a)(5)(A)(i) of the Code. Telephone conversation between Florence Harmon, Senior Special Counsel, Division, Commission, from Laura Ganzler, Counsel, NASD, on March 10, 2004.

[20] *See* O'Donnell Letter.

[21] *See* O'Donnell Letter.

[22] *See* Lipner Letter.

[23] In approving this proposed rule change, the Commission notes that it has considered its impact

in particular, the requirements of section 15A of the Act [24] and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act,[25] which, among other things, requires that NASD's rules be 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.

At the Commission's request, Professor Michael Perino issued a report assessing the adequacy of NASD's and New York Stock Exchange, Inc.'s (''NYSE'') arbitrator disclosure requirements and evaluating the impact of the recently adopted California Ethics Standards [26] on the current conflict disclosure rules of the self-regulatory organizations (''SROs'').[27] The Perino Report recommended several amendments to SRO arbitrator classification and disclosure rules that, according to the Perino Report, might ''provide additional assurance to investors that arbitrations are in fact neutral and fair.'' The Commission believes that this proposed rule change implements those recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the Perino Report recommendations.

Specifically, the Commission finds that NASD's proposal to amend the definition of non-public arbitrator in Rules 10308(a)(4) and 10308 (5)(A) of the Code is consistent with the Act. NASD's proposal, among other things, to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined as non-public is reasonably designed to reduce a perception of bias by NASD arbitration panel members. Some commenters argued that professional partners of all persons described in Rule 10308(a)(4)(C) of the Code be categorized as non-public regardless of whether the partner's firm meets the proposed 10 percent threshold while others argued that the 10% threshold is too broad and will adversely impact the depth of the pool of potential arbitrators. NASD's proposal to expand the definition of ''immediate family member'' in Rule 10308(a)(5)(B) of the Code to include parents, stepparents, children, or stepchildren, as well as any member of the arbitrator's household is also consistent with the Act. Some commenters objected to this expansion of the definition of ''immediate family member'' stating that it too would reduce the number of competent candidates to serve as public arbitrators.

The Commission believes that NASD proposal to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator is reasonably designed to reduce a perception of bias by NASD arbitration panel members. In addition, the Perino Report recommended that NASD consider an expansion of the definition of ''immediate family member'' to include parents and children, even if the parent or child do not share the same home or receive substantial support from a non-public arbitrator.[28] NASD considered the issue and determined to expand the term. The Commission also believes it is reasonable for NASD to further expand the definition of non-public arbitrator by including stepparents and step children as well as parents, children, and any household member in the definition of immediate family member. The Perino Report also noted that ''no classification rule could ever precisely define public and non-public arbitrators; there will always be classification questions at the margins about which reasonable people will differ.''[29] Thus, the Commission believes that the amendments to the definition of public arbitrator, including the 10 percent threshold and definition of ''immediate family member'' are consistent with the Act.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change (File No. SR–NASD–2003–95) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9163 Filed 4–21–04; 8:45 am]

BILLING CODE 8010–01–P

on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78*o*–3.

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] *See* California Rules of Court, Division VI of the Appendix, entitled, ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration.''

[27] *See* Perino Report, *supra* note 15.

[28] *See id.*

[29] *See id.*

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49569; File No. SR–PCX–2004–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Clarify the PCX General Membership Fees Portion of the PCX Schedule of Fees and Charges

April 15, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 14, 2004, the Exchange amended the proposed rule change.[3] The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* April 13, 2004 letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaced and superseded the original proposed rule change. In Amendment No. 1, the PCX asks the Commission to review the proposed rule change pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. The Commission considers the original proposed rule change to have satisfied the five-day pre-filing notice requirement under Rule 19b–4(f)(6). Additionally, for purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 14, 2004, the day the PCX filed Amendment No. 1. 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to make clarifying changes to its Schedule of Fees and Charges ("Schedule''). The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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 Exchange is proposing to make two clarifying amendments to the PCX General Membership Fees portion of its Schedule.

First, the Exchange wishes to make a clarifying change to the "Initial Membership Fee'' portion of the Schedule. On December 12, 2003, the Exchange submitted a rule filing to amend PCX's membership-related fees portion of the Schedule, which became effective upon filing.[6] In that filing (SR–PCX–2003–69), the Exchange proposed to amend the structure of its Initial Membership Fee and incorporate a flat fee of $1,500 for all seat activations for all Member Organizations and Nominees.[7] While the simplicity of the new fee structure has been successful, there has been some confusion as to the fee name. Currently, the fee is called "Initial Membership Fee,'' which is a misnomer as the fee relates specifically to membership activations. Hence, the Exchange wishes to accurately reflect this fee as "Activation Fee.''

Second, the Exchange proposes to make clarifying amendments to the "Options Orientation Fee'' portion of the Schedule. On September 29, 2003, the Exchange filed with the Commission a proposed rule change to amend the Options Orientation Fee, which became effective upon filing.[8] In that filing (SR–PCX–2003–57), the Exchange restructured its Options Orientation Fee as the Exchange transitioned its orientation and testing process from a third party provider to the PCX and NASD. Thus, the restructured "Options Orientation Fee'' is only intended to apply to applicants who are required to complete the PCX Orientation and Testing Program in order to satisfy applicable examination requirements set forth in PCX Rule 1.7. For these applicants, the investigation and fingerprinting fees are included as part of the Options Orientation Fee. Applicants who have otherwise satisfied applicable examination requirements of PCX Rule 1.7 (*e.g.*, Series 7, Series 44, Series 45, etc.), and thus are not required to complete the PCX Orientation and Testing Program, are only assessed the $125 investigation fee and the $35 fingerprinting fee. In other words, these applicants will not be assessed the $1,000 Options Orientation Fee. There has been confusion among the Members as to whether the Options Orientation Fee is inclusive of the investigation and fingerprinting fees, and vice versa. Thus, the Exchange wishes to clarify the aforementioned fees by including the details stated above in the Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[9] of the Act, in general, and furthers the objectives of section 6(b)(5),[10] in particular, because it is designed to promote just and equitable principals 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The PCX has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the clarification to be implemented immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–26 on the subject line.

Paper comments:

[6] *See* Securities Exchange Act Release No. 48971 (Dec. 22, 2003), 68 FR 75307 (Dec. 30, 2003) (SR–PCX–2003–69).

[7] The initial seat activation fee applies to each Member Organization as well as each Nominee to a Member Organization since activation for each Nominee requires a separate administrative process.

[8] *See* Securities Exchange Act Release No. 48597 (Oct. 7, 2003), 68 FR 59439 (Oct. 15, 2003) (SR–PCX–2003–57).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of eliminating the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–26 and should be submitted on or before May 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9162 Filed 4–21–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 4692]

60-Day Notice of Proposed Information Collection: Form DS–156, Nonimmigrant Visa Application; OMB Control Number 1405–0018

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Nonimmigrant Visa Application.

Frequency: Once per respondent.

Form Number: DS–156.

Respondents: Nonimmigrant visa applicants.

Estimated Number of Respondents: 12,300,000 per year.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 12,300,000 hours per year.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached at 202–663–1166.

Dated: April 5, 2004.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 04–9168 Filed 4–21–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4693]

Culturally Significant Objects Imported for Exhibition Determinations: ''Inverted Utopias: Avant-Garde Art in Latin America''

AGENCY: Department of State.

ACTION: Notice; correction.

SUMMARY: On April 7, 2004, notice was published on page 18414 of the FR (volume 69, number 67) by the Department of State pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875]. The referenced Notice is corrected to include additional objects in the exhibition "Inverted Utopias: Avant-Garde Art in Latin America'' imported from abroad for temporary exhibition within the United States, which I determine are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston from on or about June 20, 2004 to on or about September 12, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the additional exhibit objects covered by this Notice, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–5078). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 14, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–9165 Filed 4–21–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4694]

Culturally Significant Objects Imported for Exhibition Determinations: "People of the Twentieth Century'': August Sander's Photographic Portrait of Germany

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of

October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "People of the Twentieth Century'': August Sander's Photographic Portrait of Germany, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about May 24, 2004, to on or about September 19, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information or a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: April 15, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–9166 Filed 4–21–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4695]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Creative Arts Exchanges

SUMMARY: The Cultural Programs Division within the Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs (the Bureau) announces an open competition for the Creative Arts Exchanges Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for exchange programs that utilize the arts to educate foreign audiences about the United States and its foreign policy goals.

General Program Information

This competition is based on the premise that cultural exchanges will promote tolerance for pluralism in ideas, cultural values and peoples, and encourage other societies to implement democratic systems and practices. The goal of the projects submitted under this Request for Proposals will be to utilize the arts as a mechanism to engage youth and young adult audiences from diverse economic and social backgrounds. We are especially interested in reaching disadvantaged Muslim youth. Exchange activities funded under the Creative Arts Exchanges Program will address two questions:

1. How do artists and arts organizations in the United States reflect and exhibit American Society, including the principles of freedom of expression, entrepreneurship, altruism, volunteerism, philanthropy and community affiliation?

2. How do American artists convey, depict and represent these aspects of their society to citizens in other countries, and thereby inspire a better understanding of Americans, and promote democratic change?

The Cultural Programs Division within the Office of Citizen Exchanges welcomes proposals that directly respond to the thematic areas listed below. It is anticipated that approximately $1,200,000 will be available to support projects under this request for proposals. Competition for grant awards will be intense. The program office anticipates awarding approximately 5–6 grants. Public and private non-profit arts and educational organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) are eligible to apply for grants between $50,000—$300,000 to conduct a program within one or more of the thematic areas listed below.

Projects should focus on two-way, reciprocal exchanges of cultural and artistic professionals, unless otherwise specified. Proposals will be accepted for projects involving overseas countries within all six geographic regions designated by the Department of State: Africa, Europe and Eurasia, Near East and North Africa, East Asia and the Pacific, South Asia and the Western Hemisphere. However, the overseas partner country must have a significant Muslim population, except where other countries are explicitly listed for consideration under a specific theme. In Africa, we are particularly interested in projects with Burkina Faso, Mali, Nigeria, Senegal, Sudan and Tanzania. In the Near East and North Africa, we are specifically interested in exchange programs with the following countries: Morocco, Tunis, Algeria, Egypt, Syria, Jordan, Lebanon, West Bank/Gaza, Saudi Arabia, Yemen, Oman, Qatar, United Arab Emirates, Kuwait, Bahrain and Iraq. In the East Asia and Pacific Region we are especially interested in projects with Indonesia, Malaysia, Thailand, the Philippines, Brunei, Singapore and Cambodia. Please read the thematic subject delineations to ascertain if there are targeted geographic region(s) and/or specific countries for which we are particularly interested in receiving proposals. Applicants may contact the Cultural Programs Division at (202) 203–7488 for additional reference.

Each project should propose an innovative, informed and efficient plan to identify, recruit and/or audition, select and program participants. Proposals must contain a narrative description of the correlation between the project and one or more of the following public and foreign policy topics: conflict resolution, global heritage, cultural heritage and tourism, regional stability, democratization and freedom of expression in an open society.

Applicants may submit proposals that involve in depth multi-dimensional projects that concentrate on one of the themes listed below. Alternatively, exchange projects funded under this competition may also incorporate several, or all of these themes:

Arts Management

Projects submitted in response to this theme would be aimed at expanding the expertise of visual and performing arts administrators who are seeking to balance government and private sector funding. Additional topics would include the relevance of arts organizations to local communities, including questions of institutional outreach and educational programs, and the role of arts organizations in cultural heritage and tourism. Proposed projects that include particular geographic regions and countries will be rated more competitive under our first review criteria [listed in the following section of this document]. The targeted regions and countries are; East Asia and the Pacific, Near East and North Africa, and Eastern European and Central Asian countries with significant Muslim populations. This includes Cambodia, Indonesia, Malaysia, Singapore, Albania, Azerbaijan, Bosnia, Kyrgyz Republic, Tajikistan and Uzbekistan. The two-way exchange program should help arts administrators and directors of cultural institutions develop their skills

and share best practices in the areas of marketing, audience expansion, financial management, volunteer training, staff-development and strategies for creating public/private partnerships with an emphasis on economic stability, community service and civic education. The program might be structured around reciprocal residencies, workshops and shadowing experiences.

Contemporary Dance Choreographers Exchange

Proposals are sought to coordinate the travel of professional American choreographers of contemporary/modern dance technique to countries with significant Muslim populations to work in higher educational institutes for the arts, and university or college settings, introducing young dancers to modern American choreography, interacting with Muslim youth and providing an alternative avenue for conflict resolution. Exchange programs could focus on modern, tap, jazz and/or the fusion of traditional and ethnic dance with contemporary choreography. Projects would provide opportunities for contemporary American choreographers to conduct 4–6 week reciprocal residencies at overseas educational institutions during which they would present lectures/demonstrations and workshops and create collaborative choreography pieces focused on dance as a form of free expression in a democratic society.

Music and/or Theater Education As A Conflict Resolution Tool

Proposals are sought which bridge political differences between countries and peoples, through two-way exchanges between U.S. music or theater institutions working with young musicians or actors, and music and theater artists and faculty from countries with majority/significant Muslim populations, including Israel. The project should include exchanges between music or theater establishments in order to promote collegiality friendship, understanding and basic human interaction between the students.

Under this theme, conflict resolution is defined as the implementation of peaceful, non-violent mediation and dispute resolution strategies to achieve mutual agreement among community and interest groups, political parties and nations. Project ideas will employee music and/or theater to illustrate and communicate peacemaking techniques including effective communication, critical thinking and problem solving.

Proposals should include strategies to expand the reach of the program by encouraging the U.S. and overseas participants to share the knowledge they gain from this project with their fellow performing artists and students. The projects should also build strong linkages and promote joint opportunities for the American and overseas musicians and actors to perform together, teach joint master classes and workshops, and increase their artistic skills.

Visual Artists Residency Program

Proposals are sought to support the travel and participation of young and emerging artists from countries with significant Muslim populations in individual and group residency programs at artists' colonies, summer institutes and residential workshops for visual artists. Projects should include opportunities for artists working in the full range of contemporary art making media. Residency programs may be limited to artists at the same or differing stages of professional development. Proposals are also sought for programs that contain reciprocal exchange components for U.S. curators and institutions to conduct workshops and colloquia on subjects in American art for young and emerging artists in countries with significant Muslim populations. Projects should provide opportunities for American curators and artists to present lectures, focused exhibitions, master classes and workshops during two to three week residencies at overseas universities, museums and art centers.

Film and the American Image—New Audiences, New Filmmakers

Projects proposed under this theme should provide a cultural outreach and exchange program designed to introduce audiences to diverse new works, develop relationships between international communities of artists and enrich the professional development of the participants. The goal of the program will be to expose young audiences, especially young Muslims, to films and filmmakers that illustrate various attributes of American society so that they have a better understanding of the openness and diversity that defines the United States. Projects which focus on artistic communities in Egypt, Jordan, Indonesia, Lebanon, Syria, Iran, Iraq, Turkey, Israel, Tajikistan, Uzbekistan, Afghanistan, Turkmenistan, Pakistan, and Kazakhstan, will be rated more competitive under Review Criteria #1. Programs should be designed to engage young audiences in the targeted countries. These exchanges will introduce America's most talented filmmakers to particular overseas countries, bring foreign counterparts to the United States and expose American and foreign audiences to each other's cultural and artistic traditions. The project objective will be to build linkages between foreign and American arts educational and cultural institutions. Proposals must include reciprocal exchanges of highly accomplished individuals or groups, resulting in linkages that promote joint projects during the grant period and continuing after the program ends.

Intellectual Property Rights for Artists

Projects under this theme should focus on increasing awareness among filmmakers, writers, composers, musicians, and other experts of the need to create mechanisms to protect against unauthorized replication and distribution of their cultural works. Featured topics of discussion will include the value of establishing an effective basis for creating such mechanisms in their own countries. Programs should include lectures and round table discussions on the importance of anti-piracy laws to protect each nation's cultural heritage as well as safeguard the individual property rights of its artists; the world wide trend toward harmonizing national laws governing copyright protection, the need for copyright safeguards to help foster cultural production; and the role of intellectual property rights enforcement in international trade. Programs also should include hands-on workshops to assist artists in less open societies in navigating the legislative systems in their countries in order to influence their governments to begin the process of adopting and enforcing good copyright laws. Proposals for projects under this I.P.R. theme will be accepted for projects including any or all of the following countries: Brazil, China, Egypt, Israel, Lebanon, Morocco and Russia. Proposals may include a film or visual or performing arts presentation as a component of the project.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and

forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance award grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, innovation and precision. The program plan should state the relevance of a project to the U.S. Department of State's foreign policy goals. Program ideas should focus on the targeted world regions and countries that are listed at the beginning of the General Program Information Section and in several of the specific descriptions of each subject theme.

2. *Program Plan:* A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and program plan should adhere to the program overview and guidelines described above. Projects should reflect creative, efficient and innovative planning. Program activities should engage young Muslim participants and audience members in the overseas partner countries.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment.

5. *Support of Diversity and Cross-Cultural Sensitivity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Proposals should illustrate the applicant's mastery of strategies to achieve cross-cultural sensitivity.

6. *Institutional Capacity and Record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

8. *Monitoring and Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. *Cost-effectiveness and Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Value to U.S.-Partner Country Relations:* The U.S. Department of State's geographic cultural exchange coordinators and overseas Embassy officers will need to conduct an internal review of proposed projects to assess the need for the program, potential impact, and significance in the partner country(ies).

Ineligible Proposals

Projects based on other artistic objectives, or themes not previously listed, including performing arts tours, conferences, museum exchanges, independent film production, an individual artist's career development and programs focused on the creation of art, rather than the exchange of participants, will not be accepted. Proposals to present community or amateur arts groups will be declared technically ineligible under this competition.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. It is anticipated that grant awards will range from $50,000 to $300,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Proposals that provide a minimum of 30 percent cost sharing of the amount of grant funds sought from ECA will be rated more competitive under Review Criteria #9.

When cost sharing is stated, it is understood and agreed that the applicant will provide the minimum amount of cost sharing listed in the project budget, and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event that a grantee does not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution may be reduced proportionately to the contribution.

Allowable costs for the program include the following:

(1) Travel costs. International and domestic airfares; visas, transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

(2) Per Diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S. the published Federal per diem rates must be used.

(3) Book and Cultural Allowance: Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a participant book allowance of $50.

(4) Consultants. Consultants may be used to provide specialized expertise, design or manage development projects or to make presentations. Honoraria generally do not exceed $250 per day.

(5) Health Insurance. Foreign participants will be covered under the terms of a U.S. Department of State-sponsored health insurance policy. The premium is paid by the U.S. Department of State directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

(6) Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits and other direct or indirect costs per detailed instructions in the Solicitation Package.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number: ECA/PE/C/CU–04–16.

FOR FURTHER INFORMATION CONTACT: The Cultural Programs Division, ECA/PE/C/CU, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 619–4779, to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Jill Staggs, on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf*. Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals: **Important Note:** The deadline for this competition is Thursday, May 20, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and *12 copies* of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/CU–04–16, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary'' and "Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Officers at the U.S. embassies for their review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Pub. L. 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered under this sole source solicitation, and an employee of the Bureau will be the "Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22CFR 62, the Silk Road Project, inc. will be a third party "cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to full comply with 22 CFR 62 *et seq*. The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If the applicant has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 et. seq., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov or from:* United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance award grants resides with the Bureau's Grants Officer.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 14, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–9167 Filed 4–21–04; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement—Proposed Watts Bar Reservoir Land Plan, Loudon, Meigs, Rhea, and Roane Counties, Tennessee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Extension of public comment period.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508), section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800), and TVA's procedures implementing the National Environmental Policy Act (NEPA). On February 25, 2004, TVA published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed Reservoir Land Plan to manage Watts Bar Reservoir lands in Loudon, Meigs, Rhea, and Roane Counties, Tennessee (**Federal Register,** Volume 69, Number 37, Pages 8793–8795). To accommodate a future public meeting for this proposal, the comment period for the scoping phase of the environmental review is extended from April 15, 2004, to June 30, 2004. The date, time, location, and place of the public meeting will be announced in local newspapers, and on the TVA Web page at *http://www.tva.gov,* and may also be obtained by contacting the persons listed below.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Richard L. Toennisson, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone: (865) 632–8517; or e-mail: *rltoennisson@tva.gov.*

Dated: April 16, 2004.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 04–9114 Filed 4–21–04; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Pennsylvania State University for the University Park Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Maria Stanco, New York Airports District Office, 600 Old Country Road, Suite 440, Garden City, New York, 11530 (516–227–3808).

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the University Park Airport are in compliance with applicable requirements of Part 150, effective April 15, 2004. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport. An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150,

promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Pennsylvania State University. The documentation that constitutes the "noise exposure maps'' as defined in section 150.7 of Part 150 includes: 2000 Noise Exposure Map (Exhibit 4–4), 2005 Noise Exposure Map (Exhibit 4–5) and documentation in Chapter 4 of the Noise Exposure Maps Report for the University Park Airport; type and frequency of aircraft (Tables 4–1, 4–2) and documentation in section 4.2; airport layout and flight patterns (Exhibits 4–1, 4–2, Table 4–4) and documentation in sections 4.1, 4.4; and nighttime operations Table 4.4. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with the applicable requirements. This determination is effective on April 15, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47503 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted these maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, which under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure maps documentation and of the FAA's evaluation of the maps are available at the following locations:

Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 440, Garden City, NY 11530, and

Bryan Rodgers, University Park Airport, 2535 Fox Hill Road, State College, PA.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Jamaica, Queens, April 15th, 2004.

William J. Flanagan,

Eastern Region Airports Manager.

[FR Doc. 04–8925 Filed 4–21–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10856]

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Second request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on the proposed collection of information.

This document describes a proposed collection of information under regulations implementing section 7 of the Transportation Recall Effectiveness, Accountability, and Documentation (TREAD) Act with respect to the disposition of recalled tires, for which NHTSA intends to seek OMB approval. NHTSA issued a notice of proposed rulemaking to implement section 7 on December 18, 2001 (66 FR 65165). It then issued a supplemental notice on July 26, 2002 (67 FR 48852).

In response to an earlier request for public comment on a proposed collection of information based on the NPRM, which was published on May 27, 2003 (68 FR 28876), the Rubber Manufacturers Association (RMA) commented that NHTSA had not requested comment or fulfilled other PRA duties with respect to certain information that would have to be provided to third parties. The agency agrees that the May 27, 2003, request was inadequate. Accordingly, NHTSA is publishing this request for comment, which addresses the items identified by the RMA as well as other relevant items.

The first request for comment stated that this was a new information collection. Upon further consideration, NHTSA has decided to treat this as a revision to an existing information collection, OMB No. 2127–0004.

DATES: Comments must be received on or before June 21, 2004.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The Docket is open on weekdays from 9:30 a.m. to 5 p.m. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. George Person, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Room 5326, Washington, DC 20590. Mr. Person's telephone number is (202) 366–5210.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Disposition of Recalled Tires

Type of Request—Revision to an existing collection.

OMB Clearance Number—2127–0004.

Requested Expiration Date of Approval—February 28, 2006 (this is the current expiration date of OMB No. 2127–0004).

Summary of Collection of Information—

An outline of the information to be collected is as follows:

I. If there is a tire recall, which parties must provide information?

A. The tire manufacturer conducting the recall.

B. Any affected tire brand name owners (as defined at 49 U.S.C. 30102(b)(1)(E)), such as retail chain stores that sell recalled tires under their own "private labels'' or house labels.

C. Any vehicle manufacturer that conducts a tire recall.

D. Tire outlets under the control of a manufacturer conducting a tire recall, such as owned stores, franchised dealers and/or distributors.

II. To which parties must the information be provided?

A. Each manufacturer would have to provide information to three categories of parties:

1. NHTSA.

2. Owned stores, franchised dealers and/or distributors (third parties).

3. Independent tire outlets authorized to replace tires under the recall.

B. In the event of a recall, each tire outlet under the control of a manufacturer must provide information to the manufacturer if the outlet does not comply with certain requirements. This is referred to as "exceptions reporting'' (third party reporting).

III. What information must each manufacturer provide?

A. Contents of reports to NHTSA:

1. The manufacturer's plan for assuring that the entities replacing the tires are aware of the legal requirements related to recalls of tires established by 49 U.S.C. chapter 301 and implementing regulations.

2. An explanation of how the manufacturer will prevent, to the extent within its control, the recalled tires from being resold for installation on a motor vehicle.

3. A description of the manufacturer's program for disposing of recalled tires that are returned to the manufacturer or collected by the manufacturer from retail outlets, including, at a minimum, statements that the returned tires will be disposed of in compliance with applicable state and local laws and regulations regarding disposal of tires, and will be channeled, insofar a possible, into an "alternative beneficial non-vehicular use'' rather than being disposed of in landfills.

4. A draft of the notification(s) to be sent to stores, dealers, etc. that is described in section III.B, below.

B. Contents of reports to owned stores, franchised dealers and/or distributors, and independent outlets that are authorized to replace the recalled tires (third party reporting):

1. A description of the legal requirements related to recalls of tires established by 49 U.S.C. chapter 301 and implementing regulations, including the prohibitions on the sale of new and used defective and noncompliant tires (49 CFR 573.11 and 573.12), the right to reimbursement of the costs of certain pre-notification remedies (49 CFR 573.13), and the duty to notify NHTSA of a knowing or willful sale or lease of a new or used recalled tire that is intended for use on a motor vehicle (49 CFR 573.10).

2. Directions to manufacturer-owned and other manufacturer-controlled outlets, and guidance to all other outlets that are authorized to replace the recalled tires, on how and when to alter the recalled tires permanently so they cannot be used on vehicles.

3. Directions to manufacturer-owned and other manufacturer-controlled outlets, and guidance to all other outlets that are authorized to replace the recalled tires, either:

(a) To ship all recalled tires to one or more locations designated by the manufacturer as part of the manufacturer's recall program or to allow the manufacturer to collect and dispose of the recalled tires; or

(b) To ship recalled tires to a location of their own choosing, provided that they comply with applicable state and local laws regarding disposal of tires, along with directions and guidance on how to limit the disposal of recalled tires into landfills and instead, channel them to an "alternative beneficial non-vehicular use.''

Under Option (a), if the manufacturer establishes a testing program for recalled tires, the directions and guidance shall also include criteria for selecting recalled tires for the testing program and instructions for labeling those tires and returning them to the manufacturer.

4. Directions to manufacturer-owned and other manufacturer-controlled outlets to report to the manufacturer on a monthly basis the number of recalled tires removed from vehicles by the outlet that have not been rendered unsuitable for resale for installation on a motor vehicle within the specified time frame and to describe any such failure to comply with the manufacturer's plan.

IV. What information must tire outlets under the control of the manufacturer provide to the manufacturer (third party reporting)?

A. Monthly (or within 30 days of the deviation) reports on the number of recalled tires, if any, removed from vehicles by the outlet that have not been rendered unsuitable for resale or installation on a motor vehicle within the specified time frame (other than those returned for testing) and that describe any such failure to act in accordance with the manufacturer's plan.

B. Monthly (or within 30 days of the deviation) reports on the number of recalled tires disposed of in violation of applicable state and local laws and regulations that describe any such failure to act in accordance with the manufacturer's plan.

V. Manufacturers' Quarterly Reports to NHTSA pursuant to 49 CFR 573.7 for recalls involving the replacement of tires must include the following information:

A. The aggregate number of recalled tires that the manufacturer becomes aware have not been rendered unsuitable for resale for installation on a motor vehicle in accordance with the manufacturer's plan.

B. The aggregate number of recalled tires that the manufacturer becomes aware have been disposed of in violation of applicable state and local laws and regulations.

C. A description of any failure of a tire outlet to act in accordance with the directions in the manufacturer's plan, including an identification of the outlet in question.

VI. Recordkeeping requirements:

No recordkeeping requirements are imposed on any party by this rule.

Description of the Need for the Information and Proposed Use of the Information—NHTSA will rely on the information provided by manufacturers to NHTSA in deciding whether or not the manufacturer(s) are complying with the requirements of the TREAD Act for the proper handling and disposal of recalled tires and to ensure that the recalled tires are not reused on motor vehicles. NHTSA is requiring that certain information be provided to third parties to assure that all entities involved in tire recalls are aware of the requirements established by the TREAD Act and its implementing regulations.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)—All manufacturers that conduct tire recall campaigns would be required to provide information. We estimate that there are 10 manufacturers of tires. In the past 3 years, there has been an average of between 9 and 10 tire recalls conducted annually by all manufacturers. (Occasionally, but rarely, vehicle manufacturers conduct recalls that involve the replacement of tires.) In each instance, manufacturers will have to provide a tire disposal plan to NHTSA in their part 573 reports, and will have to include instructions to dealers and other retail outlets in their notifications to those outlets.

Manufacturers are already required to provide quarterly reports for 6 quarters for each recall pursuant to 49 CFR 577.7. Assuming 10 tire recalls per year, there could be a total of up to 60 quarterly reports per year (6 reports × 10 recalls), but we believe that few, if any, of these reports would contain any information relative to this information collection.

Manufacturer-owned or controlled dealers will be required to provide a report to manufacturers when they deviate from the manufacturer's tire disposal plan. Such reports must be provided either monthly or within 30 days of the deviation. Again, we expect very few, if any, such reports by these dealers, since we expect that they will comply with applicable statutory and regulatory requirements and with the terms of the manufacturer's plan. We invite comment as to how often entities replacing tires might violate state and local laws governing the disposal of tires or how often these entities will fail to comply with the manufacturer's instructions to render the tires unusable on a vehicle.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information in the NPRM—Manufacturers conducting tire recalls would be required to include additional information in their part 573 notices that they submit to NHTSA when initiating a recall. We estimate that this will require about one hour of staff work in each notice. Additionally, each quarterly report that includes information under this amendment could require up to an additional 8 hours to maintain the records and prepare the report; however, since only deviations from the disposal plan must be reported, we presume that no relevant information will be included in any quarterly reports submitted to NHTSA, and therefore that there will be no burden.

Manufacturers would have to include certain additional information in the notices that they are required to submit to dealers. This could require about one hour of staff work to prepare the additional information. This would be necessary once for each recall. No additional burden hours are required for printing and mailing since the notices are already required. Thus, the only burden associated with this proposed information collection under this rule is the incremental burden of providing the required additional information.

Accordingly, the annual reporting and recordkeeping burden imposed on manufacturers for information provided to NHTSA and to third party dealers and retail outlets under this proposed information collection is estimated to be 20 hours annually (10 recalls per year times 2 hours per recall).

Manufacturer owned or controlled dealers must provide information when they deviate from the manufacturer's disposal plan. In the event that is necessary, which we think unlikely, we estimate that one hour of staff time will be required to make the necessary report. However, as discussed earlier, we estimate that no reports will be provided. Accordingly, we estimate that there will be no annual burden. We invite comment relating to the expected number of annual occurrences of violations and deviations from the disposal plan by these entities.

The current OMB inventory for Information Collection No. 2127–0004 includes 15,844 hours. A proposed information collection under another TREAD Act regulation, "Reimbursement Prior to Recall'' (*see* 67 FR 64049 (October 17, 2002), petition for reconsideration pending), would add 2,360 burden hours, for a total of 18,204 hours. The number of respondents and total annual responses covered by that information collection already includes those entities conducting tire recalls. We propose to request an increase in the annual reporting and recordkeeping burden for Information Collection No. 2127–0004 of 20 hours for a total of 18,224 annual hours.

Estimate of the Total Annual Costs of the Collection of Information under this Rule—Other than the cost of the burden hours, we estimate that there would be no additional costs associated with this information collection, since any costs associated with the printing and distributing the necessary reports and notices is already included in the existing information collection.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: April 15, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–8987 Filed 4–21–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–17015; Notice 2]

Nissan North America, Inc.; Petition for Exemption From Two-Fleet Rule Affecting Compliance With Passenger Automobile Fuel Economy Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petition for exemption from two-fleet rule.

SUMMARY: Nissan North America, Inc. (Nissan) filed a petition requesting exemption from the two-fleet rule for the 2006–2010 model years. The two-fleet rule, which is contained in the corporate average fuel economy (CAFE) statute, requires that a manufacturer divide its passenger automobiles into two fleets, a domestically-manufactured fleet and a non-domestically manufactured fleet, and ensure that each fleet separately meets the CAFE standards for passenger automobiles.

Nissan filed the petition because a change under the statute in the treatment of value added to a vehicle in Mexico will cause one of that company's passenger automobiles, which is manufactured in Mexico, to be reclassified from non-domestic to domestic. The loss of these automobiles, which are relatively fuel-efficient, will cause its non-domestic fleet to fail to comply with the CAFE standards for passenger automobiles.

The CAFE statute requires the agency to grant such a petition unless it finds that doing so would result in reduced employment in the U.S. related to motor

vehicle manufacturing. To determine if such a reduction would result, NHTSA compared vehicle prices and sales under two scenarios: a baseline scenario in which Nissan would not have an exemption and would need either to pay penalties for noncompliance or adopt any one of a number of optional courses of action to achieve compliance; and a scenario in which Nissan would have an exemption and would not bear any of the costs of the baseline scenario. The agency then attempted to estimate the effect of the sales changes on employment for each of the options. The analysis indicated virtually no employment effect for the option most likely (on the basis of cost) to be chosen by Nissan and only slight negative employment effects for the other options.

Nissan also pointed out employment effects that are not accounted for in our economic analysis. If we deny the petition, Nissan would likely purchase fewer parts from U.S. suppliers and more parts from foreign suppliers in order to recontent one of its vehicles. The result would be fewer American workers producing components to be used in Nissan cars. We are unable to quantify with precision the number of jobs potentially lost from denying the petition. It is likely, however, that more jobs would be lost if we deny the petition than would be lost if we grant it.

In sum, the evidence does not support a finding that granting the petition would reduce motor vehicle manufacturing employment in the U.S. The evidence suggests instead that granting the petition would likely help retain American jobs that might otherwise be sent overseas. Accordingly, the agency will permit Nissan to combine its domestic and non-domestic passenger automobile fleet for model years 2006–2010.

DATES: Effective Date: October 1, 2005.

SUPPLEMENTARY INFORMATION:

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I. Glossary

We are providing a glossary to define some of the key terms in this notice. Some of the terms are used in a way that is broader (domestic automobile and domestic content) or narrower (non-domestic automobile and non-domestic content) than the meaning they are given in the dictionary or common usage. Most notably, "domestic content'' refers to content from not only the U.S., but also Canada and, beginning in the next model year, Mexico as well. Thus, beginning in the 2005 model year, "non-domestic content'' will refer to content from countries other than the U.S., Canada and Mexico. In other words, domestic content will mean North American content.

These departures from ordinary meaning are necessary because of the special meaning given the terms by statute. In particular, their meanings are governed by the provisions of the CAFE statute, *i.e.*, the Energy Policy and Conservation Act (EPCA), as modified by the Automotive Fuel Efficiency Act of 1980 and the 1994 amendments implementing the North American Free Trade Agreement (NAFTA).

As used in this notice, these terms have the following meanings:

Assembly: a part of an automobile made within the U.S., Canada, or Mexico whose component parts are substantially transformed by the manufacturing process into a new and different article of commerce.

Baseline scenario: the state of the world if Nissan does not have an exemption during model years 2006–2010.

Domestic content: beginning in model year 2005, components that are wholly grown, produced or manufactured in the U.S., Canada or Mexico or substantially transformed during the manufacturing process in the U.S., Canada or Mexico into a new and different article of commerce.

Domestic passenger automobile: a passenger automobile with 75 percent or more domestic content.

Exemption scenario: the state of the world if Nissan has an exemption during model years 2006–2010.

Non-domestic passenger automobile: a passenger automobile with less than 75 percent domestic content.

North America: within the borders of U.S., Canada, or Mexico.

Recontenting: replacing domestic content of a passenger automobile with non-domestic content for the purpose of causing the automobile to be classified as a non-domestic automobile.

II. Statutory Background of the Two-fleet Rule

A. Energy Policy and Conservation Act, as Originally Enacted in 1975

In 1975, Congress enacted the Energy Policy and Conservation Act (EPCA), mandating that passenger automobiles and non-passenger automobiles meet CAFE standards. Pub. L. 94–163. *See* 49 U.S.C. 32901 *et seq.* When Congress was considering EPCA, it was concerned that U.S. manufacturers might aid their efforts to comply with the standards by importing and selling increasing numbers of fuel-efficient passenger automobiles manufactured abroad. The importation and sale by U.S. manufacturers of such passenger automobiles would have helped them to meet fuel economy standards, but at the cost of decreasing employment in the U.S. automobile industry. To forestall this possibility, Congress adopted a provision, known as the "two-fleet rule,'' requiring that each manufacturer's passenger automobiles be separated into two fleets, domestic and non-domestic, and that each of the

fleets separately comply with the fuel economy standards for passenger automobiles. *See* 49 U.S.C. 32904(b)(1).

Under the "two-fleet rule,'' as enacted in 1975, an automobile was considered to be domestically manufactured, and included in a manufacturer's domestic fleet, if at least 75% of cost to the manufacturer of manufacturing the automobile was attributable to value added in the U.S. or Canada. The rule treated passenger automobiles not meeting this 75% threshold as non-domestically manufactured, even if they were assembled in the U.S. or Canada.

B. 1980 Amendments

The two-fleet rule initially did not affect foreign manufacturers of passenger automobiles. All of their automobiles were manufactured abroad using assemblies and parts made abroad and thus were classified as non-domestic.

However, within several years of the enactment of EPCA, one foreign manufacturer, Volkswagen, began manufacturing passenger automobiles in the U.S. Although these passenger automobiles were assembled in the U.S., and a significant portion of their content was domestic, they were treated as non-domestic because they had less than 75% of their value added in the U.S. or Canada.

These passenger automobiles, which were more fuel-efficient than other Volkswagen's non-domestic passenger automobiles, helped Volkswagen's overall non-domestic fleet comply with CAFE standards. Although using U.S. or Canadian components might have been cheaper than using non-domestic ones, Volkswagen restricted the use of U.S. or Canadian components in those passenger automobiles to keep those U.S.-built passenger automobiles from switching from non-domestic to domestic under the two-fleet rule.

Volkswagen's restricting the use of parts made or assembled in the U.S. or Canada in passenger automobiles produced in a U.S. assembly plant demonstrated that the two-fleet rule, which was intended to prevent job losses in the U.S. automobile industry, could also operate to prevent increases in new U.S. jobs. Foreign manufacturers wishing to avoid undesirable impacts of the two-fleet rule might either limit or forego the use of U.S. or Canadian parts in passenger automobiles manufactured in U.S. plants or simply choose not to invest in building those plants.[1]

Concerned that the two-fleet rule might have the unintended effect of discouraging foreign manufacturers from producing passenger automobiles in the U.S. or encouraging them to limit artificially the amount of U.S. or Canadian parts if they did, Congress authorized exemptions from the two-fleet rule in the Automotive Fuel Efficiency Act of 1980 (1980 amendments). (Pub. L. 96–425.) The amendments made manufacturers that either began manufacturing automobiles in the U.S. after December 22, 1975, and before May 1, 1980, or began manufacturing automobiles in the U.S. after April 30, 1980 and completed at least one model year of production before December 31, 1985 eligible to petition NHTSA for relief from the two-fleet rule. The amendments also provided that the agency must grant a manufacturer's petition unless it determines that doing so would result in reduced employment in the U.S. related to motor vehicle manufacturing.[2] See 49 U.S.C. 32904(b)(6)(B).[3]

The agency must publish its decision whether to grant or deny a petition by the 90th day after the receipt of an exemption petition or the petition is deemed granted by operation of law. *See* 49 U.S.C. 32904(b)(6)(C). To alleviate concerns that granting an exemption from the two-fleet rule might provide a foreign manufacturer with an opportunity to earn or use credits not available to its domestic counterparts, Congress also provided that any manufacturer receiving an exemption could not earn or use credits during any year that the exemption was in effect.[4] *See* 49 U.S.C. 32904(b)(8).

The 1980 amendments contained a number of other provisions intended to foster job growth in the U.S. motor vehicle industry. In an effort to foster joint ventures between U.S. and foreign manufacturers while providing opportunities for increased jobs in the U.S., the 1980 amendments allowed domestic manufacturers to include, on a one-time basis, up 150,000 non-domestic passenger automobiles in their domestic fleets for up to four years if certain conditions were met. One of the conditions was that the automobiles have at least 50% domestic content in the first model year and 75% domestic content before the end of the 4th model year. *See* 49 U.S.C. 32904(b)(5).

C. 1994 Amendments

In adopting legislation implementing the North American Free Trade Agreement (NAFTA), Congress amended the two-fleet rule in 1994 to provide, beginning not later than the 2005 model year, that a passenger automobile is considered to be "domestically manufactured'' if at least 75 percent of the cost to the manufacturer of that automobile is attributable to value added in the U.S., Canada or Mexico. *See* 49 U.S.C. 32904(b)(3)(A). Thus, beginning in that model year, value added in Mexico will no longer be treated as non-domestic content. Instead, it will be treated as domestic content.[5]

III. Nissan's Petition for Exemption

A. Statutorily Caused Change in Sentra's Classification from Non-domestic to Domestic

Nissan submitted a petition for exemption from the two-fleet rule on January 23, 2004. It requested exemption for the 2006–2010 model years or until circumstances remove the need for an exemption. Nissan noted that, beginning in the 2005 model year (MY), the Sentra, which is manufactured in Mexico, will switch from its non-domestic fleet to its domestic fleet because the value added

[1] Conference Committee Report No. 96–1402. p. 12 (1980)

[2] We interpret "employment * * * related to motor vehicle manufacturing'' as including employment directly as well as indirectly involved in motor vehicle manufacture. Senate Committee on Commerce, Science and Transportation, Senate Report No. 96–642, pp. 6–7. Both are fall within the broad standard of being "*related to* motor vehicle manufacturing.'' (Emphasis added.) Further, in its discussion of the background and need for the 1980 amendments, the House report on those amendments makes specific reference to employment in the supplier industry. House Committee on Interstate and Foreign Commerce, H. Rep. No. 96–1026, p. 10.

[3] To ensure that granting an exemption actually achieved the desired effect of increasing employment, the 1980 amendments required that a report examining the effects of an exemption be included in the annual fuel economy report to Congress required by § 32916(a). *See* 49 U.S.C. 32916(b). However, Section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (P.L. 104–66; 31 U.S.C. 1113 note) terminated the requirement that NHTSA file an annual fuel economy report as of December 21, 1999. This termination date was later changed to May 15, 2000 by § 236 of the District of Columbia Appropriations Act of 2000 (P.L. 106–113; November 29, 1999).

[4] H. Rep. No. 96–1026, p. 16.

[5] Consistent with the NAFTA amendments, the EPA regulations provide that for any model year commencing after January 1, 2004, components manufactured in the U.S., Canada, or Mexico will be considered to be domestic content for the purposes of determining if a vehicle manufactured in any of these three countries has sufficient domestic content to be classified as a domestic automobile. *See* 40 CFR § 600.511–80(b)(3). Therefore, for any model year beginning after January 1, 2004, vehicles with 75% or more of their content originating in North America, will be considered to be part of a manufacturer's domestic fleet. Moreover, parts originating in Mexico will also be considered to be domestic content. Therefore, for any model year after January 1, 2004, a manufacturer wishing to keep its Mexican-built vehicles in its non-domestic fleet would need to replace North American components with ones manufactured outside of the U.S., Canada, or Mexico.

in Mexico will change from non-domestic to domestic content. The Sentra is one of the more fuel-efficient passenger automobiles in Nissan's current non-domestic fleet. This switch will lower the CAFE of Nissan's non-domestic fleet below the CAFE standard for passenger automobiles and raise the CAFE of Nissan's domestic fleet well above the standard.[6]

Nissan said:

* * *[I]t may be forced to decrease domestic content and outsource the production of one or all of its domestically manufactured vehicles—*i.e.*, the Sentra, Altima or Maxima—in order to offset this imbalance. Decreasing the domestic content level of the Sentra could result in a decrease in the use of U.S.-made components, such as radiators, air conditioners, suspensions, engine parts and some engines, currently used in the Sentra. Likewise, decreasing the domestic content level of the Altima or Maxima, which currently make up Nissan's domestic fleet, would mean decreasing production at NNA's [Nissan's] Smyrna, Tennessee plant and reducing domestic engine production at the Decherd, Tennessee plant. Such reductions in domestic production of the Altima or Maxima could likely lead to reduction in employment at Nissan's Tennessee plants. Accordingly, an exemption from the [two-fleet] provision is necessary for Nissan to maintain existing levels of Sentra production in Mexico, and Altima and Maxima production at Smyrna, Tennessee, as well as the corresponding levels of engine and component production in Decherd, Tennessee. (at 4)

Nissan said further:

[A]n exemption from separate calculations under the CAFE program will allow Nissan to continue its current pace of expansion in U.S. production in model years 2006–2010 and to increase the level of local content beyond 75% in additional vehicles, without becoming subject to CAFE penalties. Failure to grant the petition will force Nissan to reconsider the current ramp up in U.S. investment as resources are diverted from expansion in the United States to addressing the CAFE issue. (at 8)

[6] A manufacturer's fuel economy performance is measured as a production-weighted harmonic average of the fuel economies of the vehicles in its fleet. In MY 2003, Nissan's non-domestic fleet consisted of two 350Z variants (24.8 and 26 mpg), the Infiniti G35 (26 mpg), the Infiniti G35 (24.6 mpg), the Infiniti I35 (25.9 mpg), the Infiniti M45 (23 mpg), the Infiniti Q45 (23 mpg), two versions of the Maxima (27.7 and 25.9 mpg), and five versions of the Sentra (30.3, 36.8, 30.1, 28.8 and 36.1 mpg). Nissan's non-domestic fleet CAFE was 27.4 mpg, one-tenth below the required passenger car standard of 27.5 mpg. Transfer of the Sentra to Nissan's domestic fleet would have caused Nissan's non-domestic fleet CAFE to fall further below the applicable standard. Confidential data submitted by Nissan indicates that the contribution made by the Sentra to the CAFE of its non-domestic fleet would become increasingly important in coming years.

B. Nissan's Assessment of Employment Impacts of Not Granting Its Petition

Nissan's petition states that recontenting some of its passenger automobiles would reduce employment by the U.S. automobile equipment suppliers (at 14). Although Nissan's petition did not provide any estimates of costs (or savings) that might be associated with any such recontenting, the company later submitted data regarding this issue at NHTSA's request.

Its petition also states (at 18) that even if the agency does not grant the requested exemption and the sale of Nissan's imported passenger automobiles decline as a result, "it is unlikely that domestic manufacturers would capture these lost sales'' because "Nissan purchasers typically prefer import vehicles.''

IV. Notice of Petition and Request for Comments

NHTSA published a notice announcing receipt of Nissan's petition on February 5, 2004 (69 FR 5654). The notice briefly summarized Nissan's petition and solicited comments on the effect that granting the petition might have on motor vehicle manufacturing related employment in the U.S. The notice discussed two approaches NHTSA might take in considering the Nissan petition. We described an analytic approach under which NHTSA would determine the difference between projected total motor vehicle-related employment in the U.S. if the petition were denied, and the projected total level of U.S. motor vehicle-related employment if the petition were granted.

The agency sought specific information from manufacturers of passenger automobiles within the same market segments as Nissan's passenger automobiles. In order to better assess Nissan's claim in its petition that removing domestic parts from a domestic vehicle model and substituting non-domestic parts—thereby moving domestic vehicles into its non-domestic fleet—would be prohibitively expensive, we asked manufacturers to provide information regarding costs or savings likely to result from different degrees of recontenting.

We also solicited comments on the contention in Nissan's petition that it would be unlikely that domestic manufacturers would capture sales lost by Nissan if its petition were denied and Nissan's vehicles became more expensive because "Nissan purchasers typically prefer import vehicles.'' We requested that commenters address the extent to which any such import buyer preference might be relevant to the post-2005 marketplace. In particular, we asked for information regarding any vehicle models expected to compete, even partially, with any Nissan passenger automobiles.

The notice also set forth and explained our preliminary determination that no environmental impact analysis would be required under existing law. We noted that although NHTSA prepared an environmental assessment of the effects of granting a Volkswagen petition under § 32904(b)(6) in 1981, several U.S. Circuit Courts of Appeals have since held that compliance with the National Environmental Policy Act is unnecessary in instances in which an agency has little or no discretion regarding the decision it is making.[7] We noted further that under the CAFE statute, the only issue the agency is permitted to consider in deciding whether to grant or deny Nissan's petition is the impact on U.S. automobile manufacturing-related employment. The notice observed that NHTSA is required to grant the petition unless it finds that doing so would reduce such employment. It noted further that if we took no action in the time prescribed by the statute, the statute provides that the petition is automatically granted. Accordingly, we concluded that granting the petition would not be a "major Federal action'' within the meaning of NEPA.

The notice also set forth and explained our preliminary determination that no regulatory impact analysis, other than that specified in § 32904(b)(6), would be required under existing law. We said that since our decision would not result in the issuance of a "rule'' within the meaning of the Administrative Procedure Act or Executive Order 12866, Regulatory Planning and Review, neither the requirements of the Executive Order nor those of the Department's regulatory policies and procedures apply.

V. Public Comments Submitted in Response to Notice of Petition

NHTSA received two comments in response to its February 5, 2004 notice. The United Automobile Workers (UAW) filed comments. Three manufacturers, General Motors (GM), DaimlerChrysler (DC) and the Ford Motor Company (Ford), collaborated in the filing of a single joint set of comments. An array of elected officials, Governor Haley

[7] *Citizens Against Rails-to-Trails* v. *Surface Transp. Bd.* 267 F.3d 1144, 1153 (D.C. Cir. 2001). *Sac & Fox Nation of Missouri* v. *Norton*, 240 F.3d 1250, 1262 (10th Cir. 2001); *Sierra Club* v. *Babbitt*, 65 F.3d 1502, 1513 (9th Cir. 1995)

Barbour of Mississippi, Governor Phil Bredesen of Tennessee, U.S. Senators Trent Lott, William H. Frist, Lamar Alexander, and Thad Cochran, and U.S. Representatives Chip Pickering, Bart Gordon, and Lincoln Davis, also submitted letters, all of which supported Nissan's petition.

Focusing on Nissan-related automotive employment in the U.S., the elected officials compared employment levels now, prior to the change in treatment of value added in Mexico, to employment levels that might exist after the change, in the absence of an exemption. Senators Lott and Cochran stated that automobile industry employment in the U.S. would suffer if Nissan were denied the exemption. In their view, denying the exemption would make it necessary for Nissan to pay CAFE civil penalties or reduce the domestic content of their vehicles. Either course would result in reduced automobile manufacturing employment in the U.S. However, they said that granting the exemption would allow Nissan to continue expansion of U.S. production and employment.

Senators Frist and Alexander submitted a joint letter expressing support for the Nissan petition. The letter stated that the impact of the NAFTA amendments could reduce the amount of American components in Nissan's Mexican-built passenger automobiles or lead Nissan to reduce production of its U.S. built passenger automobiles. Either case would lead to U.S. job losses and harm to the U.S. automobile industry. The letter also said that the exemption provision in the 1980 amendments was created expressly to address the situation now faced by Nissan. Given Nissan's plans to expand U.S. production, both Senators indicated that granting the exemption would, in their view, further stimulate growth in the U.S. automobile industry.

The other elected officials, Governors Bredesen and Barbour and Representatives Pickering, Gordon, and Davis, expressed similar sentiments. Governors Bredesen and Barbour also supported granting Nissan's request on the grounds that doing so would increase employment in their States and the U.S. automobile industry as a whole.

The UAW submitted comments opposing Nissan's request. The UAW stated first that Nissan, like other manufacturers affected by the NAFTA amendments, had over ten years to plan for the change in treatment of value added in Mexico. Accordingly, the organization argued that Nissan should not be granted any special relief. The UAW also argued that Nissan could take other steps to avoid CAFE penalties besides seeking exemption for the two-fleet rule. One option suggested by the UAW was that Nissan could shift production of the 350ZX vehicles and its Infiniti line to the U.S. According to the UAW, such shifts would allow Nissan to avoid CAFE penalties and increase domestic auto-related employment.

The organization also argued that granting Nissan's petition would provide Nissan with a distinct competitive advantage over other manufacturers by allowing Nissan to avoid CAFE compliance costs that other manufacturers must bear. According the UAW, this competitive advantage would harm employment in the U.S. automobile manufacturing sector by causing the loss of sales by other manufacturers, both foreign-based and U.S.-based, whose automobiles have higher domestic content than those produced by Nissan. Moreover, even if Nissan buyers prefer to buy Japanese nameplate vehicles, the UAW contends that two Japanese producers, Toyota and Honda, have higher domestic content than Nissan. Therefore, even if Nissan's sales increases came only at the expense of Toyota and Honda, U.S. employment would still suffer. The UAW also argued that the idea that "import buyers'' will only buy other imports might be outmoded. Increases in quality and product offerings by Detroit-based producers have, in the UAW's view, narrowed the differences between foreign and domestic brands to the degree that the "import buyer'' phenomenon may no longer exist.

The joint comment filed by GM, Ford, and DC also opposed the Nissan petition. These manufacturers stated that the legislative history of the 1980 amendments, which authorized the exemption, demonstrates that Congress intended to encourage foreign manufacturers to begin producing vehicles in the U.S., rather than provide a benefit to manufacturers with established U.S. assembly plants.

As Nissan has been producing vehicles in U.S. plants for many years, GM, DC and Ford argued that granting the petition would accomplish little more than providing the company with a competitive advantage not envisioned by Congress when it authorized the exemptions. According to GM, DC and Ford, this competitive advantage would include avoiding the administrative costs of maintaining two fleets and gaining the flexibility of being able to combine all of its annual production into a single fleet.

GM, DC, and Ford also stated, as did the UAW, that granting the petition would be inequitable. They stated that Nissan had ample notice of the eventual effects of the NAFTA amendments. Accordingly, they said that Nissan should bear the brunt of those effects, particularly since it already knew about those effects when it moved the production of the Sentra from Tennessee to Mexico.

None of the comments or letters submitted to the agency contained any data responsive to several requests in the agency's notice for data. The agency's notice specifically requested that commenters provide data regarding the costs or savings of changing the content of their vehicles from domestic to non-domestic sources. The notice also requested that commenters provide information and data about vehicles expected to compete with Nissan automobiles and solicited views regarding the existence and impact of the "import buyer'' phenomenon cited by Nissan in its petition. No views on competing vehicles or that phenomenon were submitted.

VI. Additional Information Submitted by Nissan

In response to an agency request, Nissan submitted additional data regarding its projected CAFE on February 19, 2004. On February 24, 2004, the agency met with representatives of Nissan and requested additional data to assist the agency in evaluating the petition. To allow the agency to calculate Nissan's future CAFE, the potential for penalties, and the cost of various options that Nissan might pursue if there were no exemption, we requested that Nissan provide information regarding product plans, disaggregated sales information, and disaggregated fuel economy information for the 2004 through 2010 MYs. In order to evaluate the impacts of shifting different models from the domestic to the non-domestic fleet, the agency also requested specific information about changing the content of the Sentra, Altima and Maxima, including how allocation of costs impacts prices of Nissan vehicles.

Nissan responded to the agency's requests by providing several written submissions, including ones on March 4, and March 15, 2004. Each of the submissions was accompanied by a request that portions of the data be granted confidential treatment by the agency. Public versions of these submissions and its earlier February 19 submission have been placed in the docket.

Nissan's March 15, 2004 submission contained additional data regarding the dollar value, on a per-vehicle basis, of the domestic content that would need to

be replaced by non-domestic content for the vehicle that would be the most likely candidate for this strategy. Nissan also described how this recontenting would affect the costs of building this vehicle on a per-vehicle basis. Nissan then compared the costs of pursuing the recontenting option with the costs of paying CAFE penalties.

Nissan also revisited its contention if it lost sales due to the cost effects of the NAFTA amendments, its lost customers were more likely to purchase import nameplate vehicles than domestic nameplate brands. In Nissan's view, this ''import buyer'' phenomenon would result in a loss of jobs in the U.S. automotive industry if Nissan were not exempted and were instead to pursue a recontenting option or choose to pay CAFE penalties.

Although it did not provide any data supporting these arguments, Nissan presented two scenarios in support of its argument that the ''import buyer'' phenomenon would contribute to the loss of U.S. jobs if its petition were denied. In one scenario, Nissan assumed that it would choose to pay CAFE penalties for its non-domestic fleet and that the costs of these penalties would be allocated to the models in that fleet (350Z, Infiniti G35, G35 Coupe, Infiniti M45, and Infiniti Q45). Nissan then asserted that its own internal sales research indicated that buyers of these models would most likely be diverted to imported vehicles rather than domestically produced import nameplate models and traditional domestic brands. Even if lost Nissan sales resulted in increased sales of domestically produced vehicles, Nissan contended that these sales increases would be diffused across a number of vehicle models and brands. In Nissan's view, this wide distribution of increased sales would, at best, result in such small increases in sales of different vehicle models that the manufacturers of these vehicles would not need to hire new workers to meet additional demand.

The second scenario discussed by Nissan was based on the outcomes resulting from its recontenting a particular vehicle. Nissan presented data showing the dollar value of domestic parts that would need to be replaced with non-domestic parts to reduce the vehicle's domestic content to less than 75%. According to Nissan, this recontenting scenario would result in the loss of hundreds of American jobs, even if only some of the domestic content in the vehicles originated in the U.S. Nissan also stated that recontenting would make such job losses almost inevitable, since the loss of business would impact a small number of supplier firms that produce high volumes of parts for a single customer and could not readily replace the work done for that customer with work for another customer.

VII. Agency Evaluation of Merits of Nissan's Petition

A. Eligibility of Nissan To Petition for Exemption

Determining the eligibility of a manufacturer to petition for exemption from the ''two-fleet'' rule requires examination of the agency's statutory authority for granting such relief. Section 32904(b)(6)(A) provides that authority as follows:

> (6)(A) A manufacturer may file with the Secretary of Transportation a petition for an exemption from the requirement of separate calculations under paragraph (1)(A) of this subsection if the manufacturer began automobile production or assembly in the United States—
>
> (i) After December 22, 1975, and before May 1, 1980; or
>
> (ii) After April 30, 1980, if the manufacturer has engaged in the production or assembly in the United States for at least one model year ending before January 1, 1986.

Section 32904(b)(6)(A) states that in order for a manufacturer to be eligible to petition for exemption, the manufacturer must either have begun producing or assembling automobiles in the U.S. after December 22, 1975, and before May 1, 1980, or have begun manufacturing automobiles in the U.S. after April 30, 1980 and completed at least one model year of production before December 31, 1985. Nissan meets subparagraph (ii) of § 32904(b)(6)(A). Nissan began automobile production in the U.S. after April 30, 1980. It did so by beginning to produce trucks in Tennessee in 1983.[8] By January 1, 1986, it had completed ''three model year's worth of automobile production after April 30, 1980 and before January 1, 1986.'' (Nissan petition, at p. 4)

B. Extent of the Agency's Discretion To Grant or Deny Nissan's Petition

If a manufacturer meets the threshold eligibility requirements in § 32904(b)(6)(A), the agency must then consider the extent of its discretion to grant or deny a petition under § 32904(b)(6)(B). That discretion, and thus the scope of the agency's inquiry, is very limited. Section 32904(b)(6)(B) provides

> (B) The Secretary of Transportation *shall grant* the exemption *unless the Secretary finds* that the exemption *would result* in *reduced employment* in the United States related to motor vehicle manufacturing during the period of the exemption. * * *[9]

(Emphasis added.)

There are two particularly important aspects of that provision.

1. Discretion To Deny Only Upon Finding of Adverse Employment Impact

The first is that Congress did not simply mandate that employment impacts be considered in deciding whether to grant or deny a petition, thus leaving open the possibility that other factors could be considered. It went much further, saying that the only circumstance in which the agency may deny a petition is if the agency is able to find and does find that granting an exemption would result in an adverse impact on employment. The directive in § 32904(b)(6)(B) is clear, unambiguous and free of any language permitting or implying that any issues other than the impact on employment may factor in the agency's decision. The only statutorily relevant issue is the impact on employment.

Accordingly, the agency is foreclosed from basing its decision whether to grant or deny on additional factors as suggested by the UAW and GM, DC and Ford. The UAW urged us to take into consideration whether Nissan had adequate notice that the NAFTA amendments would eventually operate so as to shift its Mexican production from one fleet to another. We are also constrained from considering, beyond the impact that granting the exemption may have on employment, whether granting Nissan's petition might otherwise be inequitable in some fashion.

2. Probability of Adverse Employment Impact Must Be Reasonably High

The second is Congress provided that in order to make a finding sufficient to enable the agency to deny a petition, NHTSA must find that an adverse employment effect ''would'' result from granting an exemption, not merely that such an effect might or could result. We believe it insufficient for the agency to find that there is a mere possibility of an adverse employment effect or even that such an effect is more likely than not. The agency would need to find a still higher degree of likelihood, a reasonable certainty, that an adverse effect would result from granting an exemption.[10]

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[8] As used in EPCA, ''automobiles'' include passenger cars, vans, SUVs, and pickup trucks.

[9] The Secretary of Transportation has delegated the authority in § 32904 to the NHTSA Administrator. 49 CFR 1.50.

[10] *See Usery* v. *Hermitage Concrete Pipe Co.,* 584 F.2d 127 (6th Cir. 1978), where the court stated that the Occupational Safety and Health Review

C. Consistency of Nissan's Petition With Congressional Intent

In their joint comment, GM, DC and Ford contended that the legislative history of the exemption provision compels the agency to consider the Nissan petition as untimely and inconsistent with statutory intent. Relying primarily on an excerpt from the House Committee Report on the 1980 amendments stating that the exemption provision was "designed to provide incentives to new domestic manufacturers'' (H. Rep. No. 96–1026, at 14 (1980)), these manufacturers stated that Congress meant for § 32904(b)(6)(B) to operate only as an incentive to induce manufacturers to build new plants in the U.S. during a limited time period from 1975 to 1986. Since the window for building such plants has long been closed, GM, DC and Ford argued that allowing Nissan to benefit from an exemption in 2004 "stretches'' the statutory intent of the 1980 Amendments.

Neither the language of the statute nor the legislative history demonstrates that Congress intended to restrict the operation of this "job related'' provision once a manufacturer began producing automobiles between 1975 and 1986. Congress did specify certain time limits, *e.g.*, that a qualifying manufacturer must have begun or must begin U.S. production within a specific period. To encourage foreign manufacturers to begin production in the U.S., Congress limited the opportunity to petition for exemption from the two-fleet rule to only those manufacturers that began production within that 10-year window. Congress also specified that an exemption would ordinarily be effective for five model years. However, it did not place any time limits on when a qualifying manufacturer may apply for an exemption. The absence of such a limit in the statute, particularly when other time limits are present, provides compelling evidence that Congress did not intend to set a time limit restricting when qualifying manufacturers could apply.

This conclusion is reinforced by the conference report on the 1980 amendments:

> The conference substitute allows manufacturers to petition for an[d] receive an exemption *any time after the date of enactment of the Act.*
> (H. Rep. No. 96–1402, at 12 (1980)). (Emphasis added.)

The joint comment of GM, DC and Ford cite an excerpt from the House Committee report, (at 14), to support their assertion that the exemption provision was intended primarily to encourage the building of new vehicle plants.[11] However, examination of the entire paragraph from which this excerpt was drawn reinforces our view that the primary purpose of the exemption provision is to preserve or expand employment in the U.S. automobile industry when the two-fleet rule would otherwise limit the use of components made in the U.S. or Canada in U.S. assembly plants:

> Section 4(a) of the Committee Amendment is designed to provide incentives to new domestic manufacturers to *increase the local content of their vehicles,* as recommended by DOT. It is a "job related'' provision.

(H. Rep. No. 96–1026, at 14 (1980)).

The Conference report contained similar language:

> The purpose of this provision is to encourage increased employment in the United States * * *.

(at 13) Employment in the U.S. could be benefited not only by inducing foreign manufacturers to begin production in the U.S., but also by granting petitions for exemptions from the two-fleet rule any time that the rule would encourage a manufacturer to limit or reduce the domestic content of its vehicles, thus adversely affecting employment related to motor vehicle manufacturing in the U.S.

D. Methodology for Determining Net Employment Impacts

1. Rationale for the Analysis

As noted above, the statute requires that we grant Nissan's petition unless we find that doing so would result in reduced employment related to motor vehicle manufacturing in the U.S. To assess whether such a reduction would result, we needed to examine two different scenarios: a baseline scenario in which there was no exemption and a scenario in which there was an exemption.

In the baseline scenario, Nissan would remain subject to the two-fleet rule and continue to be required to ensure that its domestic and non-domestic fleets separately comply with the CAFE standard for passenger automobiles. The increase in domestic content of Sentra due to the operation of the 1994 amendments would cause that vehicle model to shift from that company's non-domestic fleet to its domestic fleet, causing its non-domestic fleet to fall below the CAFE standard. Nissan would need either to pay penalties for noncompliance or implement options that would enable it to eliminate the CAFE deficit. Our analysis assumes that Nissan will pass the costs of those actions along to consumers in the form of higher automobile prices.

In the exemption scenario, the petition would be granted, exempting Nissan from the two-fleet rule. Since Nissan would have a single fleet that would meet the CAFE standard for passenger automobiles, Nissan would not need to take any of the actions described in the baseline scenario. Thus, Nissan would not incur any costs that it would need to pass along to consumers by raising prices. Compared to the baseline scenario, this would put Nissan in a more advantageous position vis à vis its competitors, possibly inducing consumers to buy more Nissan automobiles and fewer competing automobiles.

2. Outline of Analytical Steps

The following steps were taken in conducting our analysis.[12]

(i) First, the Agency investigated the costs of Nissan's options under the baseline scenario: paying penalties for noncompliance or taking one of several alternative courses of action to comply with the CAFE standard. Nissan described three options in the petition. We considered Nissan's three options,

Commission imposed too stringent a degree of probability in resolving that the Secretary of Labor failed to prove a serious violation of the Occupational Safety and Health Act of 1970 by virtue of manufacturer's failure to protect its employees from silica dust exposure by requiring Secretary to show that silicosis, and hence serious bodily injury or death, "would,'' as opposed to "could,'' result from condition. Occupational Safety and Health Act of 1970, § 17(k) as amended 29 U.S.C.A. § 666(k). The court noted that the Commission employed a more restrictive standard than that which is called for by the Act. The court went on to say that the Commission appears to have ignored the standard that there be "a substantial probability that death or serious physical harm could result from a condition which exists.'' Instead, a majority of the Commission, by consistent employment of the term "would'' in place of "could,'' appears rather clearly to have required a greater degree of certainty. The court noted that the distinction is not merely one of semantics.

In *FTC* v. *Heinz,* 246 F.3d 708 (D.C. Cir. 2001), the court discussed the standard of review under Section 7 of the Clayton Act which prohibits acquisitions, including mergers, "where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly'' [Emphasis added] 15 U.S.C. § 18. With respect to the term "may,'' the court quoted two sources of guidance. First, in *Brown Shoe Co.* v. *U.S., 370 U.S. 294, at 323, (1962),* the Court stated that "Congress used the words 'may be substantially to lessen competition,' to indicate that its concern was with probabilities, not certainties.'' Second, the legislative history reads: "The use of these words ["may be''] means that the bill, if enacted, would not apply to the mere possibility but only to the reasonable probability of the proscribed effect * * *'' *See* S. Rep. No. 1775, at 6 (1950), U.S. Code Cong. & Admin. News at 4293, 4298.

[11] The agency believes that the meaning of § 32904(b)(6) is clear, and therefore that further inquiry into the legislative history is unnecessary.

[12] Economists at DOT's Volpe National Transportation System Center participated in conducting the analysis.

plus three additional options. We dropped one of the additional options on the grounds of prohibitive cost, and included the remaining five options in our analysis. We then made assumptions about how the cost of each option in our analysis would affect the price of Nissan's products.

(ii) Second, we identified automobiles that compete with Nissan's automobiles. This was accomplished using six different market classifications defined by Automotive News (small economy, sporty touring, mid-range standard, mid-range premium, upscale near luxury, and upscale luxury). These automobiles were judged to be close competitors of the Nissan automobiles whose prices would be affected by our granting the petition. A list of these automobiles, arranged by category, is contained in Appendix A of this notice.

(iii) Third, in order to predict the substitution of automobiles that would occur annually as a result of lower prices of Nissan automobiles in the exemption scenario, the agency employed statistical models known as multinomial logit (MNL) models. These models predict how Nissan's cost savings and resulting lower prices would impact sales within these discrete market segments.[13] Six MNL models were estimated, one for each market classification.[14] These models predict the number of competitors' sales that are lost, given a reduction in the price of one or more Nissan automobiles.

(iv) Lastly, we converted the annual changes in automobile sales into annual changes in employment. Using data showing the U.S. man-hours expended in the assembly of automobiles and the production of engines and transmissions, we computed total U.S. jobs in both the baseline scenario and the exemption scenario. Our analysis also accounted for impacts on suppliers of engines and transmissions, but not other "upstream'' parts suppliers. The difference of the two is the net employment impact of granting the petition.[15]

E. Details of the Analysis

1. Potential Compliance Options Nissan Could Choose

In performing the baseline analysis, NHTSA assumed that Nissan would react to the statutorily caused change in the composition of its non-domestic and domestic fleets as any rational profit maximizing automobile manufacturer would, *i.e.*, by evaluating the options available to it and selecting the lowest cost option that enables its non-domestic passenger automobile fleet to comply with CAFE standards. Nissan identified three options in its petition: (1) & (2) reduce the domestic content in either the Sentra or Altima so it is reclassified as a non-domestic vehicle, or (3) pay CAFE penalties. In deciding which options to include in its analysis, NHTSA examined these options, plus three others: move Infiniti and 350ZX production to the U.S. (causing those relatively fuel-inefficient vehicles to become domestic), improve the CAFE of its non-domestic fleet sufficiently to eliminate the CAFE shortfall, or improve the CAFE of its non-domestic fleet up to the point that paying CAFE penalties becomes less expensive than the cost of further improvements and then pay those penalties.

i. Options in Nissan's Petition

Nissan's petition listed three potential compliance options it would consider if its petition were denied. One option would be to move the Sentra from its domestic fleet to its non-domestic fleet by replacing domestic content with non-domestic content. A second option would be to move the Altima to its non-domestic fleet by reducing the domestic content of that automobile. A third option would be to pay CAFE penalties.

The first two options involve reducing the domestic content of either the Altima, currently built in the U.S., or the Sentra, currently built in Mexico. In either case, the automobiles' domestic content would be reduced to less than 75%, making these automobiles part of Nissan's non-domestic fleet, thereby balancing the CAFEs of the two fleets and making Nissan compliant with the current standard. If the domestic content of the Mexican built Sentra were reduced to below 75% so that it is reclassified as a non-domestic automobile, Nissan would comply with 27.5-mpg passenger automobile standard in both of its fleets. The same is true if the domestic content of the U.S. built Altima and Maxima were reduced to below 75%.

Nissan's petition states that the company's most likely response to not obtaining an exemption would be to remove domestic content from the Sentra. Although NHTSA solicited comments and data regarding the costs of removing domestic content in its February 5, 2004 notice, we did not receive any information in response to that request. At the agency's request, Nissan later provided that information for its vehicles.

Because the agency does not have the data needed to determine the costs of content shifting, we relied on an analysis of these costs submitted by Nissan. In that analysis, Nissan provided estimates of the per-vehicle costs and the dollar value of the components and domestic labor that must be shifted from domestic sources to non-domestic sources to reduce the domestic content of the Sentra to less than 75%. A similar analysis was provided for the domestic Altima. Upper bounds of the cost estimates for the two content shifting options appear in Table 1. Although the per-vehicle costs for the two options are similar, the total costs are different due to the number of each automobile produced. Nissan also claims that content shifting must be done to the entire production of a particular model line.

The third option discussed by Nissan was that the company could simply maintain its current product plans and pay whatever CAFE penalties it would incur as a result of its non-domestic fleet failing to meet the standard. For each model year it falls short of the standard, Nissan would need to apply credits, pay a penalty, or, if its credits were not sufficient to address the shortfall, pay penalties and apply credits at the same time. If it were to rely on credits, Nissan would, for each model year it has a shortfall, either need to apply credits it has earned in the three previous model years or file a plan with NHTSA seeking approval to apply credits it would earn in the next three years. *See* 49 U.S.C. 32903.

The data provided by Nissan related to its non-domestic fleet show that, by MY 2006, the company will not have any credits available from past years, or based on its present product plans, be in a position to file a plan to use credits from future model years. Nissan claims that paying penalties is not a likely course of action: "For a variety of reasons, however, including economic

[13] A multinomial logit model is a form of what are known as discrete choice models. These models are widely used in economic, marketing, transportation and other fields to represent the choice of one among a set of mutually exclusive alternatives. As purchasing a vehicle represents a discrete choice and that choice, for all but the most wealthy or irrational consumers, is mutually exclusive, the agency chose to use a multinomial logit model to predict the car buying choices consumers would make under the most likely set of outcomes that would result from granting Nissan's petition. A more detailed explanation of this model is contained in Appendix A.

[14] Analyzing the choices that consumers will make requires knowledge of the options or alternatives available to the consumers. The set of options or alternatives are known as a "choice set.''

[15] *See* Part VII.E.4 below for a discussion of the effects of the various assumptions in this analysis on the estimated employment impacts and Part VIII.C. below for a discussion of the supplier and parts producer jobs not included in this analysis of net employment impact.

considerations and publicity, Nissan is not likely to pursue this option.'' (p. 13). However, given that a number of manufacturers routinely pay CAFE penalties and doing so may be an option that a rational manufacturer would consider, the agency decided that this option is sufficiently viable for it to be included in the agency's analysis.

For passenger automobiles, CAFE penalties for each model year are calculated by applying a penalty of $5.50 for each tenth of a mile of a gallon that the CAFE for a manufacturer's fleet is less than the current standard of 27.5 mpg and multiplying the resulting figure by the number of automobiles manufactured in that fleet in that year. *See 49 U.S.C. 32912(b) and 49 CFR 578.5(h)(2).* Nissan provided a projection of its future CAFE performance to the agency in its supplemental submissions. Based on these data, the shift of the Mexican Sentras to the domestic fleet, and Nissan's not taking any other measures to improve non-domestic fleet, we estimated that Nissan's potential CAFE penalty liability ranges from $25.0 million for MY 2006 to $12.0 million in MYs 2008 and 2010. These costs, along with the potential costs of other options we considered as likely to be chosen by Nissan, are summarized in Table 1.

ii. Additional Options Considered by the Agency

NHTSA also considered three additional options that were not identified in Nissan's petition. First, we considered, as the U.A.W. suggested in its comments, the possibility that Nissan could improve its non-domestic fleet average by relocating production of 350ZX and Infiniti automobiles to the U.S., thereby increasing their domestic content above the 75% threshold, and changing their classification to domestic. Relocating production of the 350ZX and Infiniti passenger automobile lines to the U.S. might offset the loss of the Mexican-built Sentras from Nissan's non-domestic fleet. We have determined, however, that no rational, profit-maximizing manufacturer would pursue this strategy.

North American sales of the 350ZX and Infiniti lines are relatively small compared to those of the Sentra, Altima, or Maxima. Relocating production of these vehicles to North America would have several impacts. The plants now producing them would have to be closed or used at less than full capacity. Production of the 350ZX and Infiniti lines would have to either be incorporated into existing North American production lines, which may exceed capacity and require substantial investment, or opening. Shifting the production of these automobiles would entail significant capital expenditures to construct a new plant in North America to build them. The expenditures would be in the hundreds of millions of dollars.[16] The shift would also lead to an under-utilization of existing plants in Japan. For these reasons, the agency did not consider it worthwhile to quantify the costs of this option since a profit-maximizing manufacturer would not be likely to choose it.

The agency also considered two options that involve the addition of fuel saving technology to Nissan's non-domestic fleet so that it complies with the CAFE standard. Adding technology to a domestic fleet containing the Sentra would not be necessary, as that fleet would meet the 27.5-mpg standard. To aid it in analyzing what technologies might be added, NHTSA used a report by the National Academy of Sciences (NAS).[17] Responding to a Congressional directive in the FY 2001 DOT Appropriations Act (Pub. L. 106–346), the NAS completed a review of fuel economy standards in 2002. This review included an examination of technologies that could be used to increase the fuel economy of new light duty automobiles. The NAS did not discuss all possible technologies, but rather listed about two-dozen specific technologies and groups of technologies that it considered as technically feasible and cost-effective. The NAS report has received extensive external review, and is considered to be a reasonable and reliable appraisal of the range of technologies, the resulting improvement in fuel consumption improvement, and costs. A list of these technologies, their costs ranges and resulting improvements in fuel economy appear in Appendix B.

In its analysis, the agency added NAS report fuel efficiency technologies to the technologies already in Nissan's non-domestic passenger automobiles, beginning with those technologies that provided the most improvement for the least cost, and continuing with those technologies that produced progressively less return in fuel efficiency for the incurred cost.[18] Under this methodology, we considered that Nissan would pursue one of two options. One option—which our analysis termed the "technology with cost minimization'' approach—would be to add technology until the cost of doing so equals or exceeds the cost of paying penalties. At that point, we assumed Nissan would elect to pay the penalties rather than pay for the relatively more expensive technology. The second option, which takes into account Nissan's representation that it would exhaust other options before paying CAFE penalties, estimated Nissan's costs if it used all available technologies, regardless of cost, to achieve compliance. This approach is termed the "technology only'' approach in Table 1.

Our analysis showed that technology with cost minimization option would not yield a significant change in the CAFE of Nissan's non-domestic fleet. Using the mid-range of cost and fuel consumption improvement estimates from the NAS report demonstrated that applying any but the most inexpensive technologies (*i.e.*, use of low friction lubricants) exceeded the costs of paying penalties. Given the relatively low cost of paying penalties instead of investing in more fuel-efficient technologies, we estimated that Nissan would only be able to improve its non-domestic fleet fuel economy by one to five percent under this option. Therefore, if the benefits of better fuel economy are ignored, this option simply becomes the same as the paying-the-penalties option since only a small amount of technology would be used before paying penalties becomes less expensive.

The agency believes that increased fuel-efficiency provides benefits that are valued by consumers. Consumers will realize benefits from lower operating costs if they choose a more fuel-efficient automobile over a less-efficient one. Since this benefit might induce purchasers to choose to buy a Nissan automobile instead of a competitor's product, we assume that Nissan would choose to add additional technology to provide this additional benefit to its potential customers. Under the technology with cost minimization option, Nissan will add technology until the incremental cost of technology, less the benefits of increased fuel economy, exceeds the cost of paying the penalty. This fuel savings benefit was calculated using a price of $1.50 per gallon over a 4.5-year time horizon, discounted at

[16] Construction of BMW's Spartanburg, South Carolina assembly plant, which produces premium vehicles similar to the Infiniti and 350ZX lines, involved an investment well over $500 million dollars. *http://www.autointell-news.com/european_companies/BMW/bmw3.htm.*

[17] "Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards,'' (2002).

[18] The agency used a similar methodology, which we referred to as the "Volpe Analysis,'' in promulgating the light truck fuel economy standards for MYs 2005–2007 (68 FR 16867; April 7, 2003).

7%.[19] If Nissan chose to expend additional sums to provide this fuel savings benefit, it would spend more than it would if it simply chose to pay penalties. Table 1 shows annual costs would vary from $32.8 million in 2006 to $19.4 million in 2008. These costs are slightly higher than the technology only option for which total costs range from $19.9 million in 2010 to $44.8 million in 2009. This option uses technology, no matter what the cost, to avoid paying penalties.

TABLE 1.—TOTAL COST OF OPTIONS

[in millions of dollars]

Model year	Reduce domestic content of Sentra [1]	Reduce domestic content of Altima [2]	Pay penalty	Technology w/cost minimization	Technology only
2006	<$10	<$20	$25.0	$32.8	$39.6
2007	<$10	<$20	13.5	20.2	38.3
2008	<$10	<$20	12.0	19.4	43.9
2009	<$10	<$20	13.5	21.5	44.8
2010	<$10	<$20	12.0	19.9	44.3

[1] A range is used to preserve the confidentiality of data submitted by Nissan.

2. Effects of Options on Prices of Nissan's Models

The agency's analysis concluded that in the baseline scenario, Nissan would likely adopt one of five options to address the CAFE shortfall in its non-domestic fleet: Recontent the Sentra or Altima, pay CAFE penalties, improve fuel economy until the cost of doing so equaled penalty costs less gains to the consumer, and improve fuel economy using technology regardless of cost. Taking the total estimated costs provided in Table 1 and projections of Nissan sales for each of the 2006 through 2010 MYs, we calculated the increased cost per automobile under two different cost recovery assumptions. The first assumption is that compliance costs attributable to a particular model are recovered by passing them directly on to the buyers of that model in the form of a higher price for each sale of that model. The second assumption is that compliance costs are spread out evenly across the entire fleet incurring them.

In its March 15, 2004 response to our request for supplemental data, Nissan stated that it passes compliance costs on exclusively to the models that incur them. For example, if recontenting the Sentra were to cost $8 million in 2006 and 100,000 are produced, the price increase for a Sentra would be $8 million divided by 100,000, or approximately $80 per automobile.

However, the agency believes that a rational profit-maximizing firm in the same position as Nissan might allocate compliance costs across its entire fleet. The demand for an economy passenger automobile such as a Nissan Sentra is more likely to be driven by price than the demand for a higher priced luxury passenger automobile such as the Infiniti Q45. Raising the price of luxury Nissan automobiles by $80, or even $160, would be a small change in their overall prices and would probably have little impact on demand. On the other hand, raising Sentra prices by $80 may have a relatively larger impact on sales. Based on these considerations, we considered a variation of the recontenting option in which the costs incurred by Nissan under the baseline were allocated evenly across its non-domestic fleet. For example, if recontenting the Sentra cost $8 million in 2006 and 200,000 passenger automobiles were produced for Nissan's non-domestic fleet, all the automobiles in that fleet, from the Sentra to the most expensive Infiniti, would increase in price by $40.

The agency's estimates of the price changes per automobile under these two different cost recovery assumptions are shown below in Tables 2A and 2B. The options are listed from left to right in the order of their cost:

TABLE 2A.—PER AUTOMOBILE PRICE INCREASES UNDER THE DIRECT COST RECOVERY ASSUMPTION [1]

Model year	Reduce domestic content of Senatra [2]	Reduce domestic content of Altima [2]	Pay penalty	Add technology w/ cost minimization	Add technology only
2006	$25–$150	$25–$150	$0–$262	$0–$344	$174–$344
2007	25–150	25–150	0–240	0–358	174–384
2008	25–150	25–150	0–231	0–371	174–384
2009	25–150	25–150	34–379	61–602	174–384
2010	25–150	25–150	32–361	59–596	174–384

[1] In this table, we assumed that costs are distributed to models that accrue them. Since different models accrue different compliance costs, these price increases appear as ranges showing the minimum and maximum price increase. All price increases are rounded to the nearest dollar.

[2] Since only one model line is altered, these prices only apply to the Sentra and Altima respectively. A range is used to preserve the confidentiality of data submitted by Nissan.

TABLE 2B.—PER AUTOMOBILE PRICE INCREASES UNDER THE DIRECT COST RECOVERY ASSUMPTION [1]

Model year	Reduce domestic content of Senatra [2]	Reduce domestic content of Altima [2]	Pay penalty	Add technology w/ cost minimization	Add technology only
2006	$0–$100	$0–$100	$196	$256	$310

[19] For this analysis, NHTSA assumed a gasoline price of $1.50 per gallon. This is about $0.04 per gallon higher than NHSTA assumed when preparing its analysis of the recently-promulgated changes to the CAFE standard for light trucks. By comparison, the Energy Information Administration's latest Annual Energy Outlook (AEO 2004) forecasts that gasoline prices will eventually tend toward a stable $1.49 per gallon.

TABLE 2B.—PER AUTOMOBILE PRICE INCREASES UNDER THE DIRECT COST RECOVERY ASSUMPTION [1]—Continued

Model year	Reduce domestic content of Senatra [2]	Reduce domestic content of Altima [2]	Pay penalty	Add technology w/ cost minimization	Add technology only
2007	0–100	0–100	113	169	319
2008	0–100	0–100	89	143	324
2009	0–100	0–100	93	147	307
2010	0–100	0–100	83	137	306

[1] In this table, we assumed costs are evenly distributed over the fleet that incurs them. In the case of reducing domestic content in the Sentra (Altima), the Sentras (Altimas) are assumed to be part of the import fleet. In all other cases, both the Sentras and Altimas are assumed to be part of the domestic fleet. In all cases, costs are incurred and spread across the import fleet. All price increases are rounded to the nearest dollar.

3. Impacts of Price Changes on Automobile Sales

i. Estimation of Impacts Due to Price Changes

Whatever option Nissan chooses under the baseline scenario will cause an increase in the price of Nissan passenger automobiles. Because the per automobile price increases shown in Tables 2A and 2B are small relative to the price of a new passenger automobile, we assume that total automobile sales would remain constant regardless of which option Nissan chooses. If Nissan automobiles become more expensive, some consumers will forego buying Nissans and choose some other automobile. Therefore, sales losses by Nissan translate into increased sales for its competitors.

To predict shifts in automobile purchases as a result of price changes, we utilized a multinomial logit (MNL) model. MNL models are commonly used in the economics literature to estimate demand in situations in which only one good is chosen from a larger choice set. They have been used to model the demand for automobiles, durable goods and travel mode. This type of model is especially appropriate for automobile purchases because consumers rarely buy more than one automobile at a time.

To construct the model, all relevant automobiles need to be grouped into "choice sets''. A choice set is a grouping of automobiles that are considered to be direct competitors, or close substitutes. For the analysis, we use market classifications defined by Automotive News in 2003.[20] A table of these choice sets and an explanation of MNL models appears in Appendix A.

When the price of Nissan automobiles increases, the MNL model will predict that fewer Nissan automobiles will be sold. The loss in sales to Nissan will be offset by an increase in sales of competitor's automobiles. For example, if one of the options pursued by Nissan resulted in the price of Sentras being $80.00 higher during each model year from 2005 through 2010, the agency's MNL model predicts changes in sales of competing vehicle models as illustrated in Table 3.

TABLE 3.—EXAMPLE SHOWING SALES SHIFTS RESULTING FROM A HYPOTHETICAL $80 PRICE INCREASE FOR SENTRA

Manufacturer	Nameplate	2004	2005	2006	2007	2008	2009	2010
Dodge	Neon SRT–4	0	28	22	27	27	27	27
Mitsubishi	Lancer ES	0	13	10	13	13	13	12
Ford	Focus ZX3 Hatchback	0	23	18	22	22	22	22
Mazda	Mazda3	0	35	27	34	34	34	33
Chevrolet	Aveo	0	18	14	17	17	17	17
Chevrolet	Cavalier Base 2dr Coupe	0	21	17	21	21	21	20
Pontiac	Vibe AWD 4dr Wagon	0	9	7	9	9	9	9
Saturn	Ion 1 Style Sedan	0	15	12	15	15	15	15
Hyundai	Elantra GT Hatchback	0	24	18	23	23	23	22
Kia	Optima EX	0	13	10	13	13	12	12
Nissan	*Sentra 1.8/2.0*	0	−236	−242	−231	−231	−227	−223
Nissan	*Sentra 2.5 S*	0	−77	0	−75	−75	−74	−73
Suzuki	Aerio LX Fwd Sedan	0	21	16	21	21	20	20
Suzuki	Aerio Wagon	0	19	15	19	19	18	18
Toyota	Corolla CE	0	55	42	54	54	53	52
Toyota	Matrix Base Fwd Wagon	0	19	15	19	19	18	18

ii. The Import Buyer Phenomenon

Nissan's petition alleged that purchasers of their products are more likely to purchase an "imported'' automobile than one manufactured by one of the traditional domestic manufacturers, *i.e.*, Ford, GM or Chrysler. This "import buyer'' phenomenon, according to Nissan, influences purchasing decisions and supports the notion that lost sales by Nissan will not necessarily result in increased sales by domestic manufacturers. Nissan further noted that the agency acknowledged the existence of this "import buyer'' effect when it issued its decision granting Volkswagen's petition in 1981. (p. 18). However, Nissan did not submit any data or studies quantifying the scope or impact of this "import buyer'' phenomenon.[21]

NHTSA believes that to the extent an "import buyer'' preference exists, the

[20] *http://www.autonews.com/images/dataCenter/1365*.

[21] We also note that Nissan's own marketing efforts acknowledge that domestic nameplate vehicles are legitimate competitors for Nissan customers. Nissan's web page contains comparisons of several of its passenger automobiles to domestic nameplate vehicles. The Nissan Sentra is compared to the Chevy Cavalier, the Saturn Ion and the Ford Focus. The Nissan Maxima is compared to the Chrysler 300M, the Altima is compared to the U.S. built Mazda 6, and the Infiniti I30 is compared to the Lincoln LS V6. (*http://us.nissan.clientsites.carspecs.jato.com/us.nissan/comparison.asp*)

effects of this phenomenon are vastly different today than they were when Volkswagen made a similar argument over 20 years ago. In contrast to 1981, when Volkswagen was the only ''import'' manufacturer building passenger automobiles in the U.S., there are now eight ''import'' manufacturers producing passenger automobiles in the U.S., either in their own plants, or in plants that are joint ventures with domestic nameplate manufacturers. These manufacturers include Mazda, BMW, Honda, Mercedes-Benz, Mitsubishi, Toyota, Nissan, and Subaru. Excluding Nissan, the U.S. production of these ''import'' brands is approximately two million passenger automobiles each year.

Many of these automobiles, particularly those made by Honda and Toyota, are direct competitors of the Nissan Sentra and Altima. As shown in Table 3 above, a price increase in the Sentra, even without accounting for the ''import buyer'' phenomenon, shifts most sales to the Toyota Corolla, which is manufactured in the U.S. Moreover, the domestic content of some of these competing models, regardless of their nameplate, is comparable to, or higher than, the domestic content of the Nissan automobiles in the same market segment. Therefore, an increase in the price of a Nissan automobile that induces consumers to choose a domestically produced import nameplate automobile could raise U.S. employment.

In certain market segments, particularly those in which import manufacturers do not sell passenger automobiles produced in the U.S., the ''import buyer'' phenomenon may have more impact. Import nameplate passenger automobiles produced outside of the U.S. predominate in two of the six market segments used as choice sets by the agency's MNL models. In these segments, (Upscale Cars—Near Luxury and Upscale Cars-Luxury), the lack of domestic nameplate competitors and the preferences of consumers indicate that any ''import buyer'' phenomenon may have more impact. In these markets, price increases in Nissan products would not necessarily translate into increased sales of domestic nameplate passenger automobiles or increases in U.S. employment.

4. Net Impact on Employment

As noted above, section 32904(b)(6)(B) directs us to grant an exemption petition unless we find that doing so would result in reduced employment related to motor vehicle manufacturing in the U.S. In order to determine if granting the Nissan petition would result in such reduced employment during model years MYs 2006–2010, after estimating the cost and price differences between the baseline and exemption scenarios, and using the price differences to estimate the sales differences between the scenarios, the agency converted the sales differences into employment differences.

In order to do this, the agency needed to develop a means of translating changes in automobile sales into changes in employment. In our 1981 analysis of the Volkswagen petition, NHTSA determined that the additional sale of 12 automobiles in each year would generate one new job in that year. In that analysis, we then adjusted that figure by the percentage of domestic content in each automobile to determine the number of U.S. jobs involved.

NHTSA considered a similar approach for analyzing employment impacts in considering Nissan's petition. Current CAFE reporting requirements define domestic content as value added from both Canadian and U.S. sources. Since our decision must be based on the impact the exemption will have on employment in the U.S. alone, we sought to develop and analyze data that would distinguish between domestic content originating in the U.S., and not in Canada. As noted above, although we asked manufacturers for U.S. content data in our notice of petition, the agency did not receive any response.

In order to develop a means of accurately estimating impacts that changes in sales would have on U.S. employment, NHTSA purchased data from Harbour and Associates listing the number of U.S. man-hours expended in the assembly of automobiles and the production of engines and transmissions. Although these data do not capture the man-hours used to produce an entire automobile, it does represent a large proportion of the labor expended in building one.[22] Additionally, the data obtained from Harbour and Associates are collected and maintained so that it is possible to differentiate accurately the relative efficiency of the various producers.[23]

Using the Harbour and Associates data described above, we calculated employment impacts by multiplying the number of U.S. hours of labor per automobile times the change in automobile sales predicted by the MNL model. For example, when the price of the Sentra increases by $80, the resulting sales shifts are shown on Table 3. Many of the automobiles that compete with the Sentra have no U.S. labor associated with them. Examples are the Mazda3, Kia Optima, Hyundai Elantra and Suzuki Aerio. Others such as the Toyota Corolla, Dodge Neon, Ford Focus and Saturn Ion have substantial U.S. labor inputs. Summing the changes in labor associated with each model provides the net labor change.

For each of the five options Nissan could adopt in the baseline scenario, the net employment impacts of granting Nissan's petition are shown below in Tables 4A and 4B. The options are listed from left to right in the order of their cost (see Tables 2A and 2B above):

TABLE 4A.—NUMBER OF U.S. AUTOMOBILE INDUSTRY-RELATED JOBS GAINED OR LOST (−) IF PETITION IS GRANTED

[Direct Cost Recovery]

Year	Recon-tent Sentra	Recon-tent Altima	Pay pen-alties	Add tech-nology w/ cost mini-mization	Add tech-nology only
2006	−2	1	−41	−54	−67
2007	−2	1	−31	−46	−69
2008	−2	1	−29	−46	−69
2009	−2	1	−21	−34	−68
2010	−2	1	−17	−29	−67

[22] The data includes final assembly of vehicle. It also includes production of engine and transmission, but excludes production of all other parts.

[23] While the agency's analysis in 1981 assumed all manufacturers were equally efficient, this approach captures the variability of labor used by different manufacturers and provides differential data across the various models made by the same manufacturer.

TABLE 4B.—NUMBER OF U.S. AUTOMOBILE INDUSTRY-RELATED JOBS GAINED OR LOST (−) IF PETITION IS GRANTED
[Costs Allocated Evenly Across Non-Domestic FLeet]

Year	Recontent Sentra	Recontent Altima	Pay penalties	Add technology w/ cost minimization	Add technology only
2006	−1	−10	−48	−63	−76
2007	−1	−10	−28	−41	−78
2008	−1	−10	−22	−35	−79
2009	−1	−10	−23	−36	−74
2010	−1	−10	−20	−33	−72

Several points about Tables 4A and 4B should be noted. First, the Tables show that the differences between the costs of the baseline options and between the two methods of allocating those costs have a very substantial impact on the effects that each of these options has on motor vehicle manufacturing related employment in the U.S. In the baseline scenario, recontenting the Altima and allocating the cost of doing so to the Altima alone would have the least effect on costs, prices, and sales. If that option is used as the basis for comparison, granting the petition results in a gain of one additional job per year in motor vehicle manufacturing related employment. At the opposite end of the spectrum, choosing to apply fuel saving technologies to Nissan's non-domestic fleet would cause Nissan to incur the greatest costs, raise prices the most, and consequently lose the most sales. Granting the petition would remove the necessity of pursuing this option and would allow Nissan to increase sales in comparison to the baseline scenario, causing decreased sales for competitors and consequent losses (over 70 jobs) in motor vehicle manufacturing related employment.

Second, those tables also indicate that under the direct cost recovery approach that Nissan said it would use, estimated job impacts would exceed one or two jobs per year only for the three most costly options in the baseline scenario—paying CAFE penalties, adding technology to its non-domestic fleet until the point at which it is less costly to pay penalties, and adding technologies without regard to cost.

Third, the results of the analysis depend on the assumptions made in predicting changes in the demand for vehicles and the resulting impacts on employment. These assumptions include the definition of market segments, technology/compliance costs, pricing strategies, specification of the MNL models, restrictions on substitution of vehicles across market segments, the decision to hold total vehicle purchases constant, and the choice of employment data. Changes in any of these assumptions might change the employment outcome. For employment outcomes very near zero, a job loss could be changed into a job gain or vice versa. However, it is doubtful that the magnitude of the estimated impact would change. Small changes in vehicle prices will inevitably lead to small changes in demand and small employment impacts.

VIII. Agency Decision

Taken together, the results of our analysis of the options do not point uniformly toward any particular conclusion about an increase or decrease in employment as a result of granting the petition. The analysis indicates that there would be a small reduction in employment for some options, but effectively no reduction for either of the available recontenting options.

A. If Not Exempted, Nissan Would Be Most Likely To Select Least Cost Options

The agency cannot give all options equal weight and simply calculate an average of the mixed projections about their employment effects for the various options because the options differ with respect to their likelihood of being chosen by Nissan in the absence of an exemption. As noted above, a rational, profit-maximizing manufacturer will select the least cost way of effectively achieving a goal. It is reasonable to conclude that Nissan is such a manufacturer and that it would not choose any of the more expensive options in the baseline scenario since less costly options (the recontenting options) to achieve the same goal are available. Indeed, the list of options that Nissan included in its petition did not include either of the two most expensive options in our analysis. Of the three most costly options in our analysis, Nissan's petition indicated that the company considered only the least expensive—paying CAFE penalties—as an alternative to recontenting. Nissan stated that it is likely to pursue this option for both economic and public relations reasons.[24] Applying technology to improve the fuel economy of its non-domestic fleet would, in the instance in which technology is applied only until it ceases to become cost effective compared to paying penalties, place Nissan in the position in which it would spend more and still bear whatever stigma would be associated with being subject to those penalties. The final option, applying technology regardless of cost, would result in Nissan's expending anywhere from $14 to $22 million per year more than it would if it simply paid penalties. Based on the confidential data submitted by Nissan, the latter option is many times more costly than the costs associated with recontenting.

For these reasons, NHTSA believes that Nissan would be likely to choose recontenting instead of any of the three most costly options. Nissan would incur significantly less cost by choosing the recontenting options than any of the three most costly options.

B. Agency Analysis of Least Cost Options Shows Granting Petition Is Unlikely To Impact Employment

If either of the recontenting options is used as the basis for estimating the effect of granting Nissan's petition, the resulting impacts on employment are virtually non-existent. If Nissan were to recontent either the Sentra or the Altima, the changes in motor vehicle manufacturing related employment in the U.S. estimated through our analysis would range from a gain of 1 job per year to a loss of 10 jobs per year. As noted above, under the cost recovery approach favored by Nissan, the

[24] The history of the CAFE program indicates that some manufacturers, particularly those producing imported luxury and high performance automobiles, routinely pay CAFE penalties. Other manufacturers, particularly "full line" manufacturers making a wide variety of automobiles, have not historically paid CAFE penalties. If Nissan were to choose to pay penalties in lieu of complying with CAFE standards, it would be the first "full line" Japanese manufacturer to do so.

estimated changes in motor vehicle manufacturing related employment would range from a gain of 1 job to a loss of 2 jobs per year.

Our MNL model assumes that any price change will cause some impact—even if just a *de minimis* one—on employment. Accordingly, the model predicts negligible impacts from the minimal price changes associated with the two recontenting options. NHTSA deems it unlikely that the small estimated sales impacts associated with either of those two options would result in actual changes in employment. As a practical matter, we believe any rational manufacturer faced with having either to increase or decrease productivity for the number of man-hours represented by up to 10 jobs per year would employ options other than hiring or firing workers. We therefore conclude that, under any of the recontenting scenarios under our analysis, granting Nissan's petition would not have an impact on motor vehicle manufacturing related employment in the U.S.

C. Unaccounted for Upstream Supplier Employment Impacts of Least Cost Options Are Likely To Be Positive

In its March 15, 2004 submission, Nissan provided confidential data indicating that if we deny the petition, Nissan would likely purchase fewer parts from U.S. suppliers and more parts from foreign suppliers in order to recontent one of its vehicles. Nissan indicated that the result would be several hundred fewer American workers producing components to be used in Nissan cars. The economic analysis described above does not account for these employment effects. More specifically, our analysis does not address the "upstream employment'' by suppliers of items such as door handles, seats, and instrument panels. We are unable to quantify with precision the number of jobs potentially lost from denying the petition. The agency could not identify or develop data showing the contribution of U.S. suppliers to the overall domestic content of automobiles built in the U.S.

Nevertheless, the agency believes that even the small price changes associated with the recontenting scenarios are likely to cause a shift in Nissan's upstream employment to another manufacturer. None of the recontenting cases would result in a large enough increase in the sales of any particular competing automobile to enable former U.S. parts suppliers to Nissan, who would suffer lost business for an entire model, to make up that lost business. Therefore, using the least cost (recontenting) options as the basis for comparison, the agency concludes that the upstream supplier employment impacts of granting the petition are likely to be positive.

D. Net Employment Impacts of Granting Nissan's Petition Are Likely To Be Positive

Given that the agency's analysis of least cost options shows that granting the petition is unlikely to impact U.S. employment, and given that upstream U.S. supplier employment impacts of those options, which are not accounted for in that analysis, are likely to be positive, it is likely, therefore, that more American jobs would be lost if we deny the petition than would be lost if we grant it.

E. Conclusion

In sum, the evidence does not support a finding that granting the petition would reduce motor vehicle manufacturing employment in the U.S. The evidence suggests instead that granting the petition would likely help retain American jobs that might otherwise be sent overseas. Accordingly, the agency will permit Nissan to combine its domestic and non-domestic passenger automobile fleet for model years 2006–2010.

IX. Analyses and Impacts

The agency's notice of petition preliminarily concluded that preparation of an environmental assessment is unnecessary where, as in this case, the agency action at issue involves little or no discretion on the part of the agency.[25] We also noted that since this proceeding will not result in the issuance of a "rule'' within the meaning of the Administrative Procedure Act or Executive Order 12866, neither the requirements of that Executive Order nor those of the Department's regulatory policies and procedures apply. Our notice said that, for the same reasons, the requirements of the Regulatory Flexibility Act do not apply.

In that notice, NHTSA stated that it would conduct further analyses of these impacts in conjunction with its final decision if comments or other information developed during the agency's analysis indicated such action would be appropriate. None of the individuals or entities submitting comments in response to that notice addressed or took issue with the agency's preliminary conclusion that it need not perform an environmental assessment. Similarly, none of the commenters questioned or offered any views on our preliminary determination that the requirements of Executive Order 12866, the Department's regulatory policies and procedures and the Regulatory Flexibility Act did not apply to his action.

After performing our analysis and reaching our decision on the merits of Nissan's petition, the agency has determined that there is no need to perform an environmental assessment. NHTSA's granting of this petition was, as required by statute, based on the consideration of a single issue—whether doing so would result in decreased employment in the U.S. automobile manufacturing industry. Since we cannot conclude that granting Nissan's petition would result in such a decrease, we were required by statute to grant the petition. Given this lack of discretion, the agency's granting this petition is not a "major Federal action'' within the meaning of NEPA. After consideration of the comments and our analysis, we have also concluded that this action is not a "rule'' and within the meaning of the Administrative Procedure Act, Executive Order 12866, the Department's regulatory procedures or the Regulatory Flexibility Act.

Appendix A

Description of the Multinominal Logit Model

In this analysis, we utilize a multinomial logit (MNL) model to estimate consumer responses to price changes. MNL models are commonly used in the economics literature to estimate demand in situations in which only one good is chosen from a larger set of choices. They have been extensively used to model the demand for vehicles, durable goods and mode of travel.

In this instance, the agency sought to determine consumer response to price changes in Nissan passenger automobiles. In order to determine what choices a potential purchaser of a particular Nissan vehicle might have when deciding to buy a passenger automobile, we relied on vehicle classifications developed by an automobile industry trade publication. This publication, Automotive News, identified six market segments in which Nissan vehicles compete with similar vehicles. These market segments, presented in Table A, serve as the choice sets that typical consumers of automobiles would confront when choosing a vehicle and are used by the agency to estimate the MNL models.

[25] *Citizens Against Rails-to-Trails* v. *Surface Transp.* Bd. 267 F.3d 1144, 1153 (D.C. Cir. 2001). *Sac & Fox Nation of Missouri* v. *Norton,* 240 F.3d 1250, 1262 (10th Cir.2001); *Sierra Club* v. *Babbitt,* 65 F.3d 1502, 1513 (9th Cir.1995).

TABLE A.—COMPETITORS BY MARKET SEGMENT [1]

Small cars	Sporty cars	Mid-range cars		Upscale cars	
Economy	Touring	Standard	Premium	Near luxury	Luxury
Nissan Sentra	*Nissan 350Z*	*Nissan Altima*	*Nissan Maxima*	*Nissan Murano*	*Infiniti Q45.*
Chevrolet Cavalier	Ford Mustang	Acura RSX	Audi A4/S4	Infiniti FX45	Infiniti M45.
Chevrolet Prizm	Mazda Miata	Buick Century	Buick Regal	Infiniti I35	Acura RL.
Dodge Neon	Mazda RX8 (2004)	Chevrolet Impala	Infiniti G20	Infiniti G35	Audi allroad.
Ford Escort ZX2	Mini Cooper	Chevrolet Monte Carlo.	Mazda Millenia	Acura CL	Audi A8/S8.
Ford Focus	Mitsuibishi Eclipse	Chrysler Sebring coupe.	Mercedes-Benz C230	Acura TL	BMW 5 series.
Hyundai Elantra	Pontiac GTO	Chrysler Sebring sedan.	Mitsubishi Diamante	Audi A6/S6	BMW 7 series.
Kia Optima	Toyota Celica	Dodge Intrepid	Oldsmobile Intrigue	BMW 3 series	BMW M3.
Mazda Protégé	Toyota MR2	Dodge Stratus coupe	Saab 9–3	Buick Park Avenue	Cadillac DeVille.
Mitisubishi Lancer	Spyder	Dodge Stratus sedan	Volkswagen Passat	Cadillac CTS	Cadillac Seville.
Mitsubishi Mirage	Volkswagen Cabrio	Ford Taurus	Volvo 40 series	Chrysler 300M	Jaguar S-type.
Pontiac Vibe		Honda Accord	Volvo 60 series	Chrysler Pacifica	Jaguar XJ.
Saturn Ion		Hyundai XG350		Jaguar X-type	Lexus GS 300.
Suzuki Aerio		Mazda 6		Lexus ES 300	Lexus GS 430.
Suzuki Esteem		Mercury Sable		Lexus IS 300/Sport Cross.	Lexus LS 430.
Toyota Corolla		Mitsubishi Galant		Lincoln LS	Lexus SC 430.
Toyota Matrix		Pontiac Grand Prix		Mercedes C class	Lincoln Continental.
		Subaru Baja		Oldsmobile Aurora	Lincoln Town Car.
		Subaru Forester		Saab 9–5	Mercedes CLK.
		Subaru Legacy		Volvo Cross Country	Mercedes E class.
		Toyota Camry		Volvo 70 series	Mercedes S-class.
		Toyota Camry Solara		Volvo 80 series	Volkswagen Phaeton.

As employed by NHTSA in this case, vehicles fall into six discrete market segments distinguished by significant differences in cost and attributes. Changes in the attributes of vehicles in one choice set are assumed to have no impact on the distribution of sales in the other market segments. Within those six market segments, the MNL model assumes that consumers react to vehicle attributes when deciding which passenger automobile to purchase. The model estimates the probability of selecting a certain vehicle as a linear function of these attributes. As independent variables, if one or more of the attributes changes in magnitude, the vehicle selection probabilities change—resulting in a different distribution of passenger automobiles being selected by consumers. The attributes used by NHTSA were derived from a vehicle comparison table used by a Web site whose target audience is consumers seeking information about new vehicles (*http://www.edmunds.com/*). The dependent variable, total model year 2004 vehicle sales, was taken from pre-model year fuel economy reports filed with NHTSA by vehicle manufacturers.

Parameter estimates, which weight the relative importance of each attribute to consumers, are presented in Table B. Sales price, which in this case is an estimate of actual sales price rather than the manufacturer's suggested retail price, appears in every model. Other attributes include curb weight, the ratio of horse-power to vehicle weight, combined city/highway fuel economy, front shoulder room, rear leg room and luggage capacity. All these parameter estimates are statistically different from zero at well below the one percent confidence level. Attributes were chosen in terms of their ability to improve overall model fit and significance levels. The number of attributes varies from simply price and the horsepower to weight ratio for sporty touring passenger automobiles, to the full set for upscale luxury passenger automobiles.

TABLE B.—MULTINOMIAL LOGIT MODEL ESTIMATION RESULTS

Vehicle attribute	Market Segment					
	Small cars	Sporty cars	Mid-range cars		Upscale cars	
	Economy	Touring	Standard	Premium	Near luxury	Luxury
Price ($)	−0.000024	−0.000116	−00.00091	−00.000119	−0.000139	−0.000040
Curb Weight (lbs)	N/A	N/A	N/A	N/A	0.00264 [withheld] [1].	0.00107
Horse Power/Weight (Total/lbs).	52.14890 [withheld] [1].	56.4525 [withheld] [1].	N/A	59.6702	80.1067	5.1241
Combined Fuel Economy (mpg).	0.280446	N/A	0.209363 [withheld] [1].	0.142656 [withheld] [1].	0.0985491	0.437070
Front Shoulder Room (sq inches).	0.321310	N/A	0.251289	0.142840	N/A	0.292574
Rear Leg Room (sq inches).	N/A	N/A	N/A	N/A	N/A	0.008040 [withheld] [1]
Luggage Capacity (sq inches).	0.008917	N/A	0.041169	0.058315	N/A	0.022454

[1] NHTSA has withheld the values of certain parameters in this table to protect confidential information that could be derived through reverse-engineering the MNL models.

Before the MNL model was used to predict shifts in numbers of vehicles in each choice set, NHTSA considered how compliance costs would be spread across Nissan's fleet. In response to a request for supplemental data, Nissan responded that compliance costs are passed on exclusively to the vehicles that incur them. For example, if reductions in the domestic content of the Sentra were to cost $7.4 million in 2006 and 112,695 are produced, the price change for a Sentra would be $7.4 million divided by 112,695, or approximately $65 per vehicle.

Although Nissan suggests a "pay as you go'' approach to spreading compliance costs, our review of economic literature suggests that profit maximizing firms would "cross-subsidize'' compliance costs incurred by cheaper, price sensitive commodities by raising the price of expensive, price insensitive commodities. In the case of automobiles, the demand for an economy passenger automobile such as a Nissan Sentra is likely to be much more driven by the price of the vehicle than the demand for a high priced luxury passenger automobile such as the Infiniti Q45 or IG35. Raising the price of luxury Nissan vehicles by $65, or even $130 would reflect a small change in their overall prices and would probably have little impact on the demand for these vehicles. On the other hand, raising Sentra prices by $65 may have a relatively larger impact on the sales of that vehicle.

Changes in vehicle sales resulting from price changes were estimated by NHTSA by estimating the distribution of vehicles within each choice set before any price change. This is simply the probability that each passenger automobile is selected (from the MNL model) times the total number of vehicles in the choice set. As changes in the price of Nissan vehicles resulted in changes to the probabilities of vehicle choices, we then estimated the new distribution of vehicles after the price change. The new distribution of vehicles is simply the probability each vehicle is selected times the total number of vehicles in the choice set.

A more detailed description of the MNL model used by NHTSA is presented below:

To model the vehicle selection process, individuals are assumed to derive utility from vehicle attributes. Let q_j represent the choice of purchasing the j-th vehicle with a vector of m = 1, . . . ,M attributes [x_{j1}, x_{j2}, . . . ,x_{jM}]. To evaluate the utility derived from purchasing this vehicle, assume $q_l = 0$ for all l not equal to j. The resulting optimization problem is:

(1) Max u{0, 0, . . ., q_j(x_{j1}, x_{j2}, . . . ,x_{jM}), . . . ,0} subject to: y > c_j,

where y is the individual's income, cj is the price of the j-th vehicle and u(.) is the individual's utility function. Solving (1) yields the bundle of attributes that would be purchased if individual were constrained to purchase the j-th vehicle. Substituting the demand functions into the utility function results in a conditional indirect utility function:

(2) $V_j = V_j(x_{1j}, . . . ,x_{jM},y,c_j) + e_j$,

where e_j is an error term that reflects uncertainty on the part of the investigator, not the individual. This conditional indirect utility function is typically written as a linear function of attributes $X_j = [x_{1j}, . . . ,x_{jM},]$, and income less vehicle cost (y − c_j):

(3) $V_j = AX_j + B(y - c_j) + e_j$,

where A and B are parameters to be estimated. The parameter B has the interpretation of the marginal utility of income. The choice of which vehicle to purchase is made by choosing among the conditional indirect utility functions. The j-th vehicle will be chosen if:

(4) $AX_j + B(y - c_j) + e_j > AX_l + B(y - c_l) + e_l$,) for all j not equal l..

If the error terms are independently and identically distributed extreme value random variables, then the parameters of the indirect utility function can be estimated using a multinomial logit model (MNL):

(5) $P(j) = \exp(V_j)/[\exp(V_l) + ... + \exp(Vn)$ for all l = 1, . . . ,K

where P(j) denotes the probability of choosing the j-th vehicle and K denotes the size of the choice set (number of different models). The resulting likelihood function is globally concave and easily estimated using any number of optimization techniques. MNL models are widely used to estimate demand when one, or a few items are chosen from a larger set of substitutable goods. These situations, commonly referred to as corner solutions, create difficulties in applying conventional demand estimation methods. In this application, estimating the demand for buying a particular vehicle would be difficult due to the fact that most individuals only purchase one vehicle. This results in a situation of zero demand for many vehicles at the consumer level. If the choice set is small, a switching regression approach can be applied. When the choice set exceeds three or four elements, this approach becomes very difficult. MNLs offer an attractive utility theoretic alternative to demand systems. Some applications of these models include automobile choice, transportation route and mode choice, recreational site choice, and food stamp program participation.

Appendix B

NATIONAL ACADEMY OF SCIENCES (NAS) FUEL ECONOMY ESTIMATES

Technology	FC (mpg)		Cost		Availability
	Low	High	Low	High	
Production-Intent Engine:					
Engine Friction Reduction	1.0%	5.0%	$35	$140	2002
Low Friction Lubricants	1.0	1.0	8	11	2002
Multi-Valve, Overhead Camshaft	2.0	5.0	105	140	2002
Variable Valve Timing	2.0	3.0	35	140	2002
Variable Valve Lift & Timing	1.0	2.0	70	210	2002
Cylinder Deactivation	3.0	6.0	112	252	2002
Engine Accessory Improvement	1.0	2.0	84	112	2002
Engine Supercharging & Downsizing	5.0	7.0	350	560	2002
Production-Intent Transmission:					
5-Speed Automatic Transmission	2.0	3.0	70	154	2002
Continuously Variable Transmission	4.0	8.0	140	350	2002
Automatic Transmission w/ Agressive Shift Logic	1.0	3.0	0	70	2002
6-Speed Automatic Transmission	1.0	2.0	140	280	2002
Production-Intent Vehicle:					
Aero Drag Reduction	1.0	2.0	0	140	2002
Improve Rolling Resistance	1.0	1.5	14	56	2002
Emerging Engine Technology:					
Intake Valve Throttling	3.0	6.0	210	420	2007–2012
Camless Valve Actuation	5.0	10.0	280	560	2007–2012
Variable Compression Ratio	2.0	6.0	210	490	2007–2012
Emerging Transmission Technology:					
Automatic Shift Manual Transmission (AST/AMT)	3.0	5.0	70	280	2007–2012
Advanced CVTs	0.0	2.0	350	840	2007–2012
Emerging Vehicle Technology:					
42 Volt Electrical Systems	1.0	2.0	70	280	2007–2012
Integrated Starter/Generator	4.0	7.0	210	350	2007–2012

NATIONAL ACADEMY OF SCIENCES (NAS) FUEL ECONOMY ESTIMATES—Continued

Technology	FC (mpg)		Cost		Availability
	Low	High	Low	High	
Electric Power Steering	1.5	2.5	105	150	2007–2012
Vehicle Weight Reduction	3.0	4.0	210	350	2007–2012

FC = Fuel Consumption Improvement

Authority: 49 U.S.C. 32904, delegations of authority at *49 CFR 1.50.*

Issued on April 15, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–8975 Filed 4–20–04; 3:05 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34486]

Ohio Valley Railroad Company—Acquisition and Operation Exemption—Harwood Properties, Inc.

Ohio Valley Railroad Company (OVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease from Harwood Properties, Inc. (HPI) and operate approximately 2.8 miles of trackage consisting of tracks 4 through 11 and connecting tracks in the former Harwood Yard in Evansville, IN. The lines connect with lines operated by Indiana Southwestern Railroad Company (ISWR). OVR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III carrier and will not exceed $5 million annually.[1]

The transaction was scheduled to be consummated on or after March 30, 2004, the effective date of exemption (7 days after the exemption was filed).[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33486, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, 2310 Grant Building, Pittsburgh, PA 15219–2383.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 16, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–9173 Filed 4–21–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34492]

Riverport Railroad, LLC—Acquisition Exemption–Jo-Davies/Carrol County Local Redevelopment Authority

Riverport Railroad, LLC (Riverport), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Jo-Davies/Carrol County Local Redevelopment Authority (the Authority), the real estate and rail assets of a 50-mile line of railroad located at the former Savanna Army Ammo Depot near Savanna, IL, and adjacent to the Chicago Twin Cities main line of The Burlington Northern and Santa Fe Railway Company (BNSF) at BNSF milepost 156.9. Riverport has been leasing and operating the line under an agreement with the Authority since 1999,[1] and the sole purpose of this transaction will be to convert its leasehold interest into an ownership interest.

Riverport certifies that its projected annual revenues as a result of this transaction will not exceed $5 million, and thus the transaction will not result in the creation of a Class I or Class II rail carrier.

The transaction was scheduled to be consummated on or after April 15, 2004.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34492, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1920 N Street, NW., Suite 800, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 15, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–9157 Filed 4–21–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 8396

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 8396, Mortgage Interest Credit.

[1] On March 26, 2004, counsel for CSX Transportation, Inc. submitted comments requesting that the Board closely review OVR's proposal to determine if OVR will actually become a common carrier or will merely be a new entity providing non-common carrier service. By facsimile dated April 6, 2004, OVR stated that it "*would* provide common carrier rail operations upon exemption authorization from the Surface Transportation Board.''

[2] On April 15, 2004, ISW filed a petition to reject the verified notice, to revoke the exemption, or to stay its effect. ISW's petition will be addressed by the Board in a separate decision.

[1] *See Riverport Railroad, L.L.C.—Lease and Operation Exemption—Jo-Davies/Carrol County Local Re-Development Authority,* STB Finance Docket No. 33799 (STB served Sept. 16, 1999).

DATES: Written comments should be received on or before June 21, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mortgage Interest Credit.

OMB Number: 1545–0930.

Form Number: 8396.

Abstract: Form 8396 is used by individual taxpayers to claim a credit against their tax for a portion of the interest paid on a home mortgage in connection with a qualified mortgage certificate. Internal Revenue Code section 25 allows the credit and code section 163(g) provides that the mortgage interest deduction will be reduced by the credit. The IRS uses the information on the form to verify the mortgage interest taken and to verify that the mortgage interest deducted on Schedule A (Form 1040) has been reduced by the allowable credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Time Per Respondent: 1 hr., 33 min.

Estimated Total Annual Burden Hours: 46,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–9177 Filed 4–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 926

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 926, Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership.

DATES: Written comments should be received on or before June 21, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership.

OMB Number: 1545–0026.

Form Number: Form 926.

Abstract: Form 926 is filed by any U.S. person who transfers property to a foreign corporation, foreign estate or trust, or foreign partnership.

Current Actions: Form 926 is being revised to reflect the repeal of Internal Revenue Code sections 1491 through 1494 and changes to Code sections 367 and 6038B. However, the actual changes to the form have not been decided upon at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 14 hours, 7 minutes.

Estimated Total Annual Burden Hours: 14,120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–9178 Filed 4–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2555

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 2555, Foreign Earned Income.

DATES: Written comments should be received on or before June 21, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Earned Income.

OMB Number: 1545–0067.

Form Number: Form 2555.

Abstract: Form 2555 is filed by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. This information is used by the IRS to determine if a taxpayer qualifies for the exclusion(s) or deduction.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 286,955

Estimated Time Per Respondent: 4 hours, 53 minutes.

Estimated Total Annual Burden Hours: 1,403,210.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–9179 Filed 4–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–12–78]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–12–78 (TD 7611) Nonbank Trustees (§ 1.408–2(e)).

DATES: Written comments should be received on or before June 21, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Nonbank Trustees.

OMB Number: 1545–0806.

Regulation Project Number: EE–12–78.

Abstract: Internal Revenue Code section 408(a)(2) permits an institution other than a bank to be the trustee of an individual retirement account. This regulation imposes certain reporting and recordkeeping requirements to enable the IRS to determine whether an institution qualifies to be a nonbank trustee and to insure that accounts are administered according to sound fiduciary principles.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 23.

Estimated Time Per Respondent: 34 minutes.

Estimated Total Annual Burden Hours: 13.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–9180 Filed 4–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Minority Veterans will be held from May 4–6, 2004, in New Orleans, Louisiana, at various sties within the VA Medical Center (VAMC), 1601 Perdido Street. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans, to asses the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

On May 4, the Committee will meet from 8:45 a.m. to 4:30 p.m. in Chapel Room 2B110 of the VAMC. The Committee will hold panel discussions with key staff members from VA South Central Veterans Integrated Services Network (16), VAMC New Orleans Health Care System, VA Regional Office and Biloxi National Cemetery on services and benefit delivery challenges, successes and concerns for the New Orleans area veterans. Additionally, the Committee will be briefed by the Minority Veterans Program Committee members on outreach initiatives within the minority communities. The Committee will conduct a town hall meeting at the VAMC beginning at 5 p.m.

On May 5, the Committee will meet from 9 a.m. to 11:30 a.m. in Chapel Room 2B110 and will hold a panel discussion with congressional staff members ion their concerns, assessments and observations of New Orleans veterans' needs. Following this discussion the Committee will receive a briefing by video teleconference on "Health Disparities'' from Dr. Donna Washington of the Greater Los Angeles VA Health Care System. The Committee will hold a town hall meeting in Houma, Louisiana, beginning at 5 p.m.

On May 6, the Committee's morning session will be held from 9:30 a.m. to 11 a.m. in Room 2C131 of the VAMC. The Committee will be briefed by Dr. Adam Gordon, Assistant Professor of Medicine, University of Pittsburgh School of Medicine, VA Pittsburgh Healthcare System, on "Minority Homeless Access to Healthcare Research'', via video teleconference. The afternoon's session (from 12 noon to 4 p.m.) will be held in Chapel Room 2B110 and, during that session, the Committee will hold panel discussions with various local veteran service organizations as to the issues and concerns facing veterans within the community. The Jackson Heart Research Group will brief the Committee on their study of the environmental and genetic factors influencing the development of cardiovascular disease in African American men and women. The meeting will adjourn at 4 p.m.

The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

For additional information about the meeting, please contact Ms. Elizabeth Olmo at (202) 273–6708.

Dated: April 15, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–9164 Filed 4–21–04; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 69, No. 78

Thursday, April 22, 2004

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.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Vaso Active Pharmaceuticals, Inc.; Order of Suspension of Trading

April 1, 2004.

Correction

In notice document 04–7786 appearing on page 17722 in the issue of Monday, April 5, 2004, make the following correction:

On page 17722, in the second column, the date is corrected to read as set forth above.

[FR Doc. C4–7786 Filed 4–21–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
April 22, 2004

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0034; FRL–7554–5]

RIN 2060–AE43

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. The EPA has identified iron and steel foundries as a major source of hazardous air pollutant (HAP) emissions. These standards implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emissions standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by facilities in the iron and steel foundries source category include metal and organic compounds. For iron and steel foundries that produce low alloy metal castings, metal HAP emitted are primarily lead and manganese with smaller amounts of cadmium, chromium, and nickel. For iron and steel foundries that produce high alloy metal or stainless steel castings, metal HAP emissions of chromium and nickel can be significant. Organic HAP emissions include acetophenone, benzene, cumene, dibenzofurans, dioxins, formaldehyde, methanol, naphthalene, phenol, pyrene, toluene, triethylamine, and xylene. Exposure to these substances has been demonstrated to cause adverse health effects, including cancer and chronic or acute disorders of the respiratory, reproductive, and central nervous systems. When fully implemented, the final rule will reduce HAP emissions from iron and steel foundries by over 820 tons per year (tpy).

EFFECTIVE DATE: April 22, 2004.

ADDRESSES: The official public docket is available for public viewing at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kevin Cavender, Metals Group (C439–02), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2364, electronic mail (e-mail) address, *cavender.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331511	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers.
	331512	Steel investment foundries.
	331513	Steel foundries (except investment).
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7682 of the final rule. 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.

Docket. The EPA has established an official public docket for this action including both Docket ID No. OAR–2002–0034 and Docket ID No. A–2000–56. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official public docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing 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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through EPA Dockets. (*See* Docket No. A–2000–56 in the Air Docket).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule is also available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. This action constitutes final administrative action on the proposed NESHAP for iron and steel foundries (67 FR 78274, December 23, 2002). Under section 307(b)(1) of the CAA, judicial review of the rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 21, 2004. Only those objections to the NESHAP which were raised with reasonable specificity during the public comment period may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are

the subject of today's final rule may not be challenged separately in civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Final Rule
A. What Is the Affected Source?
B. What Are the Emissions Limitations?
C. What Are the Operation and Maintenance (O&M) Requirements?
D. What Are the Requirements for Demonstrating Initial and Continuous Compliance?
E. What Are the Notification, Recordkeeping, and Reporting Requirements?
F. What Are the Compliance Deadlines?
III. Summary of Environmental, Energy, and Economic Impacts
A. What Are the Air Quality Impacts?
B. What Are the Cost Impacts?
C. What Are the Economic Impacts?
D. What Are the Non-air Health, Environmental, and Energy Impacts?
IV. Summary of Major Comments and Responses
A. Why Did We Revise the Proposed Affected Source Designation?
B. Why Did We Revise the Proposed Emissions Limits?
C. Why Did We Revise the Proposed Work Practice Standards?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act
VI. Statutory Authority

I. Background

Section 112(d) of the CAA requires us (the EPA) to establish national emission standards for all categories and subcategories of major sources of HAP and for area sources listed for regulation under section 112(c). Major sources are those that emit or have the potential to emit at least 10 tpy of any single HAP or 25 tpy of any combination of HAP. Area sources are stationary sources of HAP that are not major sources. Additional information on the NESHAP development process can be found in the preamble to the proposed rule (67 FR 78274).

We received a total of 83 comment letters on the proposed NESHAP from trade associations, individual plants, consultants, vendors, State agencies, environmental groups, and private citizens. We provided a 60-day comment period and held a public hearing on January 22, 2003 to provide the opportunity for oral presentations of data, views, or arguments concerning the proposed rule.

Today's final rule reflects our full consideration of all the comments we received. A detailed response to all the comments is included in the Background Information Document (BID) for the Promulgated Standards (Docket ID No. OAR–2002–0034).

II. Summary of the Final Rule

A. What Is the Affected Source?

The affected source is each new or existing iron and steel foundry that is a major source of HAP emissions. A new affected source is an iron and steel foundry for which construction or reconstruction began after December 23, 2002. An existing affected source is an iron and steel foundry for which construction or reconstruction began on or before December 23, 2002. The final rule defines an "iron and steel foundry'' as:

> A facility or portion of a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce. Research and development facilities and operations that only produce non-commercial castings are not included in this definition.

The final rule covers emissions from metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines that use a sand mold system, automated shakeout lines that use a sand mold system, and mold and core making lines. The final rule also covers fugitive emissions from foundry operations.

B. What Are the Emissions Limitations?

The final rule includes emissions limits for metal and organic HAP as well as operating limits for capture systems and control devices. Particulate matter (PM) and opacity serve as surrogate measures of metal HAP emissions; emissions limits for total metal HAP are included as alternatives to the PM limits. The final rule also includes emissions limits for volatile organic HAP (VOHAP) and triethylamine (TEA). Except for the fugitive emissions opacity limit, each of the emissions limits apply to emissions discharged to the atmosphere through a conveyance. The term "conveyance'' means the system of equipment that is designed to capture pollutants, convey them through ductwork, and exhaust them using forced ventilation. The opacity limit for fugitive emissions applies to each building or structure housing any emissions source at the iron and steel foundry. The emissions limitations and work practice requirements are:

Emissions source	Emissions limit or work practice standard
Electric arc metal melting furnace, electric induction metal melting furnace, or scrap preheater at an existing iron and steel foundry.	• 0.005 grains per dry standard cubic foot (gr/dscf) of PM; or • 0.0004 gr/dscf of total metal HAP.
Cupola metal melting furnace at an existing iron and steel foundry	• 0.006 gr/dscf of PM; or • 0.0005 gr/dscf of total metal HAP.
Cupola metal melting furnace or electric arc metal melting furnace at a new iron and steel foundry.	• 0.002 gr/dscf of PM; or • 0.0002 gr/dscf of total metal HAP.
Electric induction metal melting furnace or scrap preheater at a new iron and steel foundry.	• 0.001 gr/dscf of PM; or • 0.00008 gr/dscf of total metal HAP.
All metal melting furnaces	• Scrap certification; or • Scrap selection and inspection program.
Pouring station at an existing iron and steel foundry	• 0.010 gr/dscf or PM; or • 0.0008 gr/dscf of total metal HAP.
Pouring area or pouring station at a new iron and steel foundry	• 0.002 gr/dscf of PM; or • 0.0002 gr/dscf of total metal HAP.
Fugitive emissions from a building or structure at a new or existing iron and steel foundry.	• 20 percent opacity, except for one 6-minute average per hour that does not exceed 27 percent opacity.
Cupola metal melting furnace at a new or existing iron and steel foundry.	• 20 parts per million by volume (ppmv) of VOHAP, corrected to 10 percent oxygen.

Emissions source	Emissions limit or work practice standard
Scrap preheater at an existing iron and steel foundry	• Direct contact gas-fired preheater; or • Scrap certification; or • 20 ppmv of VOHAP.
Scrap preheater at a new iron and steel foundry	• 20 ppmv of VOHAP; or • Scrap certification.
Automated conveyor and pallet cooling lines and automated shakeout lines that use a sand mold system at a new iron and steel foundry.	• 20 ppmv VOHAP (flow-weighted average).
TEA cold box mold and core making line at a new or existing foundry	• 1 ppmv of TEA or 99 percent emissions reduction, as determined when scrubbing with fresh acid solution.
Furan warm box mold and core making line at a new or existing foundry.	• No methanol in the catalyst.

The final rule requires a capture system for those emissions sources subject to VOHAP or TEA limits. You (the owner or operator) must establish operating limits for identified capture system parameter (or parameters) that are appropriate for assessing capture system performance. At a minimum, the limits must indicate the level of ventilation draft and damper position settings. You must operate the capture systems at or above the lowest value or setting established in the operation and maintenance (O&M) plan.

If you use a wet scrubber to control PM or total metal HAP emissions from a metal melting furnace, scrap preheater, pouring area, or pouring station, the 3-hour average pressure drop and scrubber water flow rate must not fall below the minimum levels established during the initial (or subsequent) performance test. If you use a combustion device to control VOHAP emissions from a cupola metal melting furnace, the 15-minute average combustion zone temperature must not fall below 1,300 degrees Fahrenheit (°F). Periods when the cupola is off blast and for 15 minutes after going on blast from an off blast condition are not included in the 15-minute average. If you use a combustion device to control VOHAP emissions from a scrap preheater or TEA cold box mold or core making line, the 3-hour average combustion zone temperature must not fall below the minimum level established during the initial (or subsequent) performance test. If you use a wet acid scrubber to control TEA emissions, the 3-hour average scrubbing liquid flow rate must not fall below the minimum level established during the initial (or subsequent) performance test and the 3-hour average pH level of the scrubber blowdown (or the pH level during a production shift) must not exceed 4.5.

Operating limits do not apply to control devices for automated conveyor and pallet cooling lines or automated shakeout lines that use a sand mold system at a new iron and steel foundry. The final rule requires a continuous emissions monitoring system (CEMS) for these emissions sources. However, the final rule includes procedures for requesting alternative monitoring requirements. To obtain approval of alternative monitoring requirements, you must submit a monitoring plan containing information needed to demonstrate continuous compliance along with performance test results showing compliance with the emissions limit.

The final rule also includes work practice standards. Facilities must meet certification requirements for their charge materials or develop and implement a scrap selection and inspection program to minimize the amount or organics and HAP metals in furnace charge materials. The certification option requires the foundry to purchase and use only certified-metal ingots, pig iron, skittle, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, oil filters, oily turnings, lead components, mercury switches, plastics, or organic liquids. The scrap selection plan option requires scrap specifications, a certification that the scrap supplier has implemented procedures to remove mercury switches and lead components from automotive scrap, and visual inspection procedures to ensure materials meet the specifications.

The owner or operator of an existing iron and steel foundry must install, operate, and maintain a gas-fired preheater where the flame directly contacts the scrap charged. As alternative compliance options, the owner or operator may meet a 20 ppmv limit for VOHAP emissions or may charge to a preheater only materials subject to the scrap certification requirement. The owner or operator of a new iron and steel foundry must meet the 20 ppmv limit for VOHAP emissions and the operating limit for combustion devices. As an alternative compliance option for new scrap preheaters, the owner or operator must meet the scrap certification requirements.

Plants with a furan warm box mold or core making line at a new or existing iron and steel foundry must use a binder chemical formulation that contains no methanol, as listed in the Material Data Safety Sheet. This requirement applies to the catalyst portion (and not the resin portion) of the binder system.

C. What Are the Operation and Maintenance Requirements?

All foundries must prepare and follow a written operation and maintenance (O&M) plan for capture systems and control devices. The plan must include operating limits for capture systems; requirements for inspections and repairs; preventative maintenance procedures and schedules; and procedures for operation of bag leak detection systems (including corrective action steps to be taken in the event of a bag leak detection system alarm). The plan also must contain procedures for igniting gases from mold vents in pouring areas and pouring stations that use sand mold systems. These procedures may consider the ignitability of the mold gases, accessibility to the molds, and safety issues associated with igniting the gases.

The final rule also requires a startup, shutdown, and malfunction plan that meets the requirements in § 63.6(e) of the NESHAP General Provisions. The plan must include procedures for operating and maintaining the emissions source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process equipment, air pollution control systems, and monitoring systems. The final rule requires that the plan also include a description of the conditions that constitute a shutdown of a cupola and normal operating conditions following startup of a cupola. The owner or operator may use the standard operation procedures manual for the emissions source or other type of plan if it meets EPA's requirements. For more information on startup, shutdown, and malfunction plans, see the amendments

to the NESHAP General Provisions published on May 30, 2003 (68 FR 32586).

D. What Are the Requirements for Demonstrating Initial and Continuous Compliance?

Emissions Limits

Foundries must demonstrate initial compliance by conducting performance tests for all emissions sources subject to an emissions limit. To determine compliance with the metal HAP emissions limits, EPA Methods 1 through 4, and either Method 5, 5B, 5D, 5F, or 5I, as applicable (to measure PM) or Method 29 (to measure total metal HAP) are required. To determine compliance with the organic HAP limits, foundries can use EPA Method 18 to measure VOHAP, Method 25 to measure total gaseous nonmethane organics (TGNMO) as hexane, or Method 25A to measure total organic compounds (TOC) as hexane. All of these methods are in appendix A to 40 CFR part 60.

The performance test requirements for automated conveyor and pallet cooling lines and automated shakeout lines at new foundries allow you to either meet the 20 ppmv emissions limit directly using the volatile organic compound (VOC) CEMS to measure total hydrocarbons (as a surrogate for VOHAP) or to establish a site-specific VOC limit for the CEMS that is correlated to the VOHAP emissions limit. The final rule also includes procedures for computing the flow-weighted average of multiple exhaust streams from automated conveyor and pallet cooling lines or automated shakeout lines, and for determining compliance for combined emissions streams. Procedures for establishing operating limits for capture systems and control devices, and revising the limits, if necessary or desired, after the initial performance test are given in § 63.7733 of the final rule. Previous performance tests (conducted since December 22, 2002) may be used to establish operating limits.

Monitoring of capture system and control device operating parameters is required to demonstrate continuous compliance with the operating limits. These requirements include bag leak detection systems for baghouses and continuous parameter monitoring systems (CPMS) for capture systems (unless damper positions are fixed) and control devices. For wet acid scrubbers, the final rule allows plants to measure the pH every 8 hours during process operations using a pH probe and meter as an alternative to a pH CPMS. The owner or operator of automated conveyor and pallet cooling lines or automated shakeout lines that use a sand mold system at a new iron and steel foundry must monitor organic HAP emissions using a CEMS unless they apply for alternative monitoring requirements. Technical specifications, along with requirements for installation, operation, and maintenance of CPMS and CEMS, are included in the final rule. Records are required to document compliance with the monitoring, inspection, and maintenance requirements for monitoring equipment. The final rule requires performance tests every 5 years to demonstrate continuous compliance with the PM (or total metal HAP), VOHAP, and TEA emissions limits and every 6 months to demonstrate continuous compliance with the opacity limit for fugitive emissions. Subsequent performance tests are not required for foundries that demonstrate continuous compliance using a CEMS.

Work Practice Standards

No performance test is required to demonstrate initial compliance with the work practice standards. Foundries must certify that they have prepared the required plans, have installed a direct flame contact gas-fired scrap preheater if applicable (or that they will comply by meeting the 20 ppmv emissions limit or by only preheating scrap that meets the scrap certification requirements), that they will meet each applicable work practice requirement, and that they have records documenting their certification.

Records are required to demonstrate continuous compliance with compliance certifications or to document conformance with their scrap inspection and selection plan. Foundries also must keep records of the chemical composition of all catalyst binder formulations applied in a furan warm box mold or core making line.

Operation and Maintenance Requirements

Foundries must certify in their notification of compliance status that they have prepared the O&M plan and that the plant will operate equipment according to the plan requirements. Records are required to demonstrate continuous compliance with other requirements in the O&M plan for capture systems, control devices, and bag leak detection system corrective actions. To demonstrate continuous compliance with the plan for mold vent ignition, foundries must make a compliance certification in each semiannual report that they have followed the procedures in their O&M plan.

E. What Are the Notification, Recordkeeping, and Reporting Requirements?

These requirements rely on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 1 to subpart EEEEE (the final rule) shows each of the requirements in the General Provisions (§§ 63.1 through 63.15) and whether they apply.

The major notifications include one-time notifications of applicability (due no later than 120 days of promulgation), performance tests (due at least 60 days before each test), performance evaluations, and compliance status. The notification of compliance status is required no later than 60 days after the compliance demonstration if a performance test is required or no later than 30 days after the compliance demonstration if no performance test is required.

Foundries are required to maintain records that are needed to document compliance, such as performance test results; copies of the startup, shutdown, and malfunction plan; O&M plan; scrap selection and inspection plan, and associated corrective action records; monitoring data; and inspection records. Records of annual usage, chemical composition, and HAP content are also required for chemical binders and coating materials. In most cases, records must be kept for 5 years, with records for the most recent 2 years kept onsite. However, the O&M plan; scrap selection and inspection plan; and startup, shutdown, and malfunction plan are to be kept onsite and available for inspection for the life of the affected source (or until the affected source is no longer subject to the rule requirements.)

All foundries must make semiannual compliance reports of any deviation from an emissions limitation (including an operating limit), work practice standard, or O&M requirement. If no deviation occurred and no monitoring systems were out of control, only a summary report is required. More detailed information is required in the report if a deviation did occur. An immediate report is required if actions taken during a startup, shutdown, or malfunction were not consistent with the startup, shutdown, and malfunction plan.

F. What Are the Compliance Deadlines?

Existing iron and steel foundries must comply with most requirements by April 23, 2007. The final rule requires existing foundries to comply with the work practice standards in § 63.7700(b)

or (c), as applicable, by April 22, 2005. New or reconstructed iron and steel foundries that start up on or before April 22, 2004 must comply by April 22, 2004. New or reconstructed iron and steel foundries that start up after April 22, 2004 must comply upon initial startup.

III. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Air Quality Impacts?

Most iron and steel foundries have had emissions controls in place for many years similar to those in the final rule. Overall, we expect the final rule to reduce HAP emissions by more than 820 tpy. The NESHAP will also reduce PM and VOC emissions by about 2,550 tpy. Implementation of scrap selection and inspection procedures is expected to reduce mercury emissions by 1.4 tpy—an 80 percent reduction from current levels.

B. What Are the Cost Impacts?

The total annualized cost of the final rule is estimated at $21 million, including costs for control equipment, compliance tests monitoring, recordkeeping, and reporting. This cost also includes the annualized cost of capital and the annual operating and maintenance costs for supplies, control equipment, monitoring devices, and recordkeeping media.

The nationwide total capital cost of the final rule is about $188 million. The capital costs associated with the final rule are primarily due to the costs of installing modular pulse-jet baghouse systems to control emissions of metal HAP and PM from cupolas currently controlled using venturi scrubbers. This capital cost is estimated at $175 million and includes the cost of removing the venturi scrubbers and installing modular pulse-jet baghouse systems. Based on information provided by the iron and steel foundry industry, we used a retrofit cost factor of 2.2 (*i.e.*, the cost of installing a baghouse at an existing facility was estimated to be 2.2 times the cost of installing an identical baghouse at a new facility). This retrofit cost factor is considerably higher than the typical retrofit costs suggested by the literature (typical retrofit cost factors range from 1.2 to 1.5). As the cost of operating a baghouse is less than the cost of operating a PM wet scrubber due to lower energy consumption (lower pressure drop) of the baghouse system and the avoidance of wastewater treatment/disposal costs, the annual operating and maintenance cost of the final rule is actually estimated to be less than the cost of operating the current control equipment for cupolas. Therefore, there will be a net savings in the annual operating and maintenance costs for baghouses over venturi scrubbers of $6 million.

The cost impacts also include:

- The cost of installing and operating baghouses on currently uncontrolled electric induction metal melting furnaces;
- The cost of installing and operating baghouses on currently uncontrolled pouring stations;
- The cost of installing and operating wet acid scrubbers for currently uncontrolled TEA cold box mold and core making lines;
- The cost of installing and operating monitoring equipment (predominantly baghouse leak detection systems) for emissions sources; and
- The cost of electronic and paper recordkeeping media.

C. What Are the Economic Impacts?

We conducted a detailed assessment of the economic impacts associated with the final rule. The compliance costs are estimated to increase the price of iron and steel castings by 0.1 percent with domestic production declining by 8,400 tons in aggregate. The analysis also indicates no impact on the market price for foundry coke, which is used by cupolas in the production of iron castings. Foundry coke production is projected to decrease by less than 0.1 percent.

Through the market impacts described above, the final rule is predicted to have distributional impacts across producers and consumers of iron and steel castings. Consumers would incur $13.2 million of the overall regulatory burden of the final rule ($21.2 million) because of higher prices and forgone consumption. Domestic producers of iron and steel castings are expected to experience profit losses of $9.0 million due to compliance costs and lower output levels, while foreign producers may experience profit gains of $1 million associated with the higher prices. For more information, consult the economic impact analysis that is available in the docket.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

The final rule will generally provide positive secondary environmental and energy impacts. Replacing cupola wet scrubber control systems with baghouses will increase emissions of sulfur oxides by 370 tpy. However, due to the lower energy requirements for operating a baghouse versus a wet scrubber, which more than offset the energy requirements of the other new control equipment, the final rule is projected to result in a net reduction in annual energy consumption of 121,000 megawatt hours per year. This will lead to a reduction in emissions of nitrogen oxides and sulfur oxides from power plants of roughly 180 tpy and 370 tpy, respectively. Therefore, the final rule will have no net impact on emissions of sulfur oxides. There is uncertainty about the estimates of secondary emission reductions due to energy savings because we have not conducted a detailed analysis that identifies the fuel sources used at power plants from which the energy savings will be realized. Furthermore, the SO_2 emission reduction estimates may be overstated if the national cap on SO_2 emissions is binding. The replacement of wet scrubbers with baghouses is also responsible for the final rule's estimated 18.1 billion gallons per year reduction in water consumption and waste water disposal rates. Although baghouses have slightly higher dust collection efficiencies, the dust is collected in a dry form while PM collected using a wet scrubber contains significant water even after dewatering processes. Therefore, the total volume and weight of solids disposed under the final rule is estimated to be approximately the same as, if not less than, the current solid waste disposal rates.

IV. Summary of Major Comments and Responses

A. Why Did We Revise the Proposed Affected Source Designation?

Comment: Industry commenters felt the metal casting department should be separated into two separate affected sources: a melting department and a casting department. The commenters also suggested that we clarify that a foundry may contain multiple affected sources of a single type, such as more than one melting department, which may be operationally different and physically removed from each other. Some commenters felt that HAP emissions from melting are insignificant and suggested that this process either be excluded as an affected source or listed as a separate source category and then delisted.

Response: We considered splitting the metal casting department into a melting department and a casting processing department. This further classification of the affected sources might have been appropriate because the melting furnaces (melting department) are often separate from the pouring, cooling, and shakeout lines (casting processing department). However, most commenters requesting a change in the

affected source or separate source categories thought that we could then either de-list melting departments or that the emissions from the melting department could be excluded from emissions limitations. Even if the melting department were a separate source category or affected source, these sources would still be co-located at major source facilities, and we would still be required to develop MACT standards for them. Furthermore, we do not consider emissions exceeding 100 tpy of metal HAP from melting furnaces to be *de minimis* as suggested by industry. Consequently, it is necessary and appropriate to establish MACT standards for these emissions sources.

A secondary rationale for requesting a change in the affected source was the fear of triggering new source MACT requirements. However, upon clarification that defining the melting department as a separate source would not eliminate the requirements to control melting furnace emissions, these commenters supported a broad definition of the affected source.

Therefore, in response to these comments, we have written the final rule to include a broader definition of the affected source (*i.e.*, the iron and steel foundry). This broad definition eliminates a somewhat artificial separation of the mold and core making processes, which can often occur in close proximity, if not in conjunction with the casting (pouring) operations. This approach also avoids instances where an existing foundry might make minor equipment changes that might subject one process or a single piece of equipment subject to the new source emissions limits. This could occur if the affected source was defined as each "metal melting department'' which could be delineated as each melting furnace at the foundry.

B. Why Did We Revise the Proposed Emissions Limits?

Metal Melting Furnaces

Comment: Most industry commenters opposed the proposed PM limit for melting furnaces and scrap preheaters, especially at a new affected source (*i.e.*, the 0.001 gr/dscf). According to the commenters, the limit cannot be maintained on a continuous basis, will not be guaranteed by vendors, will result in high costs, will be subject to measurements errors, and stretches the capability of Method 5 (40 CFR part 60, appendix A). Several commenters stated that the emissions reductions that would be achieved did not warrant the costs associated with the PM limits. Five commenters stated that the MACT floor determination did not adequately account for inherent variability and operation under the worst foreseeable conditions. Another commenter stated that it was inappropriate to apply any variablity factor in establishing the MACT floor emissions limits. One commenter noted that a limit based on the 95th percentile of performance would suggest that the unit is out of compliance 5 percent of the time.

Several commenters stated that the EPA should not specify the control equipment in establishing the new source PM emissions limits, that the facility EPA used for new source MACT for cupolas was not representative, or that the more stringent limit was a disincentive to modernize plants. Two commenters noted that the vendor guarantee for the facility is 0.0016 gr/dscf (instead of 0.001 gr/dscf as reported by EPA) because the guarantee was 0.001 in grains per actual cubic feet. While two equipment vendors stated that they could not guarantee a long term performance of 0.001 gr/dscf, a representative for control device vendors stated that the 0.001 gr/dscf PM emissions limit for new sources is reasonable and appropriate and that a variety of fabric collector designs can achieve similar results. Most commenters recommended a limit of 0.005 gr/dscf or 0.0052 gr/dscf (which was proposed as the limit for certain new operations at integrated iron and steel plants). One commenter suggested a limit of 0.002 gr/dscf because baghouses achieving an average outlet PM concentration of 0.001 gr/dscf would be out of compliance with a limit of 0.001 gr/dscf about half the time.

Response: The CAA directs EPA to set limits that are at least as stringent as the MACT floor. For existing units, the MACT floor is the average emissions limitation achieved in practice by the best performing 12 percent of the existing units (for which we have emissions information). The MACT floor for new sources must not be less stringent than the emission control that is achieved in practice by the best-controlled similar source. Consequently, the comments related to vendor guarantees and high costs are not relevant in establishing the MACT floor for new and existing sources.

We disagree that the limit will result in significant measurement errors or that it stretches the capability of Method 5 (40 CFR part 60, appendix A). We require a minimum gas volume of 60 dry standard cubic feet (dscf) to ensure that sufficient PM is collected to evaluate the compliance of the emissions source with the PM emissions limits. In addition, the practical quantification limit for Method 5 is a filterable PM catch of 3 milligrams (mg), which is 0.0463 grains (gr). At the practical quantification limit of 3 mg of PM collected from 60 dscf of gas, the practical quantification limit of Method 5 as required in the rule is less than 0.0008 gr/dscf. If less than 3 mg of dust is collected during a test in which at least 60 dscf of gas are collected, we have reasonable assurance that the emissions source is in compliance with a 0.001 gr/dscf PM emissions limit. Without a minimum gas volume of 60 dscf, we could not confidently establish that an emissions source meets the 0.001 gr/dscf emissions limit.

As noted by the commenters, the emissions limits must be achieved at all times, and it is important that the MACT floor limit adequately account for the normal and unavoidable variability in the process and in the operation of the control device. The choice of selecting the 90th, 95th, or 99th percentile performance value depends largely on the adequacy of the data. As there were only 10 to 15 emissions tests for a given type of unit or source with which to assess the performance and variability of baghouse control systems, selecting a higher percentile range is appropriate to reflect additional uncertainty. In response to comments concerning the potential variability in process and control system performance and in recognition of the fact that the available emissions data are from a fairly limited number of short-term tests, we have re-evaluated the MACT floor determination using the 99th percentile of performance. This approach is designed to account for the different sources of variability, including variations in how the process is operated, changes in control device parameters, and variability associated with sampling and analysis.

By selecting the 99th percentile, we have sufficiently accounted for process operation, control device performance, and measurement variability. The 99th percentile is appropriate in this case because it accounts for the extreme end of the range of performance that could occur. Based on this re-evaluation of the MACT floor limits, we have adjusted the floor for cupolas at existing sources from 0.005 gr/dscf to 0.006 gr/dscf. We have adjusted the floor for cupola and electric arc furnaces at new sources from 0.001 gr/dscf to 0.002 gr/dscf. This new source limit of 0.002 gr/dscf is consistent with the vendor guarantee when corrected from actual to standard conditions (0.0016 gr/dscf).

We do not believe that setting a limit at the 95th or 99th percentile means that the emissions source will be out of

compliance 5 percent or 1 percent of the time. Through proper operation and maintenance of the control device and process equipment, the owner or operator can avoid periods of poor performance. As such, a properly operated and maintained control device applied to normal process operations should not experience performance levels that exceed the limit. In the rare event of an unavoidable failure such as a malfunction, the owner or operator can continue to demonstrate compliance by following the procedures in the startup, shutdown, and malfunction plan. If the limit is exceed as a result of variability that can and should be controlled (*i.e.*, a preventable event), then the event is a deviation.

We understand industry concerns over the representativeness of the test data for one of the foundries that was mentioned. Fortunately, emissions test data are available for an equivalent control system that does not control an additional process which might dilute the emissions. The performance level for this system is also a PM emissions limit of 0.002 gr/dscf. Consequently, the limit for new sources is not dependent only on the source test data from the one facility cited by the commenters.

Unlike cupolas and electric arc furnaces, the furnace control system that represents MACT for electric induction furnaces at new sources is a traditional baghouse, followed by a cartridge filter, followed by a high energy particulate air filter. The limit for this system is still 0.001 gr/dscf when evaluated at the 99th percentile. Therefore, the data clearly support that MACT for electric induction furnaces at new sources is 0.001 gr/dscf.

In the final rule, we have established emissions limits for the emissions sources and do not require a specific type of control device. Foundry owners or operators may use any control measure that will meet the applicable standard. In trying to understand the differences in the performance achieved by certain systems, we evaluated and compared baghouse design, cleaning mechanism, flow rate, temperature, fabric material, and air-to-cloth ratio for each system as operated during the emissions source test. Certainly a number of these factors influence the performance of a fabric filter control system. In evaluating the performance of the cupola control systems, the horizontally-designed baghouses exhibited the best performance of the systems tested. The description regarding these systems was provided primarily to document why the low outlet PM concentrations observed were real and not the result of an unknown source testing error. We do not endorse any specific baghouse design.

Because the affected sources will be required to comply with the emissions limits at all times, the limits established must account for the normal and unavoidable variability inherent in the process and in the control device operation. The emissions rate for a given emissions source does vary over time, as is demonstrated by the variability seen between individual test runs and repeat tests. As such, the MACT floor should not be developed based on the stack test data without accounting for variability. For each facility for which we have stack test emissions data, we have estimated the emissions limitation that the facility can achieve on a continuous basis by applying statistics to the available emissions data to estimate the emissions rate that facility can achieve at least 99 percent of the time.

In summary, we have established emissions limits for both new and existing emissions sources and have not specified the type of control system that must be used. For cupolas and electric arc furnaces, MACT for new sources is 0.002 gr/dscf, reflecting the 99th percentile level of performance of the median unit in the top 12 percent of best-performing units. The MACT floor for cupolas at existing foundries is 0.006 gr/dscf, reflecting the 99th percentile level of control of the median unit in the top 12 percent of best-performing units. These limits reflect our conclusion that the proposed 0.001 gr/dscf limit for cupolas and electric arc furnaces at new foundries and the 0.005 gr/dscf limit for cupolas at existing foundries did not adequately account for the variability expected in the actual performance of the units that were used to establish the MACT floor for these emissions sources. The 0.001 gr/dscf limit for electric induction furnaces and the 0.002 gr/dscf emissions limit for cupolas and electric arc furnaces at new foundries represent emissions limits that the best-performing sources can and do meet under the most adverse circumstances which can reasonably be expected to recur.

Comment: Three commenters recommended that the final rule include emissions limits for individual metal HAP. The commenters suggested that PM is not a good surrogate for lead (which is a semi-volatile metal) or mercury (which typically has low collection efficiencies in baghouses) and does not consider the hazard of the emitted pollutants. In addition, the metal HAP in the PM from some emissions sources comprise only a small portion of emissions from the emissions source or the overall foundry and has not been characterized for other emissions sources.

Response: As described in our MACT floor documentation, metal HAP emissions reductions tracked well with PM emissions reductions for the cupola control systems we tested. Reductions in lead emissions also tracked well with PM emissions reductions. Mercury emissions were a small component of the total metal HAP emissions, but both control systems tested by EPA were ineffective in reducing mercury emissions. Therefore, we do not consider these add-on control devices to be control technologies for the purpose of reducing mercury emissions. The only effective method for reducing mercury emissions at iron and steel foundries is scrap metal selection and inspection to prevent mercury contamination of the furnace charge. For all other metal HAP emissions from metal melting furnaces, the test data show that effective PM emissions control also provides effective metal HAP emissions control. In addition, PM is a reasonable surrogate for metal HAP emissions control effectiveness because MACT is a technology-based standard, and the technologies currently used by foundries that reduce metal HAP emissions are those specifically designed to control PM. Additionally, it is clear from our data the greater the PM reductions are for a specific unit, the greater are the HAP reductions. Thus, we have concluded that it is appropriate to use PM as a surrogate for HAP metals because the unit that achieves the greatest level of control of PM will also achieve the greatest level of control of metal HAP. As discussed in the following response, we have also developed an alternative limit for total metal HAP. Finally, to the extent that it is feasible to reduce metal HAP emissions by means other than operation of emission control devices, we are requiring such measures. Specifically, we are requiring a scrap selection and inspection program to reduce lead and mercury emissions. These requirements combined with the PM limits accurately reflect the MACT level of control.

Comment: Two commenters oppose the use of PM as a surrogate because some foundries melt only high quality steel with very low tramp metal content in the induction furnaces rather than scrap iron. Consequently, their uncontrolled melting furnaces may have lower HAP emissions than those from a baghouse on a furnace melting scrap with higher levels of tramp metals. We also received comments that some foundry operations, such as dry scrubbing for sulfur dioxide control,

may result in disproportionately high PM emissions without correspondingly high metal HAP emissions.

Response: As discussed in our previous response, PM is a good surrogate for HAP metals other than mercury. However, we recognize that the metal HAP content of the PM can vary significantly depending on the type of metal cast. Some foundries may have very low metal HAP emissions due to very low HAP content in their casting. We also recognize that it is infeasible for all foundries to use scrap with very low HAP metal content because of the limited supply of such scrap and because various levels of certain elements are needed in certain grades and types of iron and steel casting. Also, when foundries use scrubbing techniques for reducing sulfur dioxide emissions, they may have unusually high PM emissions without correspondingly high HAP emissions. Therefore, while PM is a good surrogate with which to judge the performance of a control system to reduce metal HAP emissions, we realize that it is only a surrogate and not a direct measure of HAP emissions, and that in some cases the PM limit may have unwarranted consequences. For the above reasons, we are establishing alternative total metal HAP emissions limits that are equivalent to the PM limits. The alternative metal HAP limits are based on, and are dependent on the MACT limits for PM.

Having identified the appropriate level of control based on PM performance, we re-examined our data on metal HAP emissions and evaluated the metal HAP emissions as a percent of the PM emissions. We evaluated metal HAP emissions to project the range of metal HAP emissions as a percent of PM associated with the performance of the type of control system used by the unit identified as the MACT floor emissions unit. That is, by normalizing the HAP emissions data by the PM emissions and aggregating these data for the various emissions sources being regulated, we calculated a reasonable estimate of the magnitude and variability of the HAP content as a percent of PM for these sources. By applying this information to the specific system that established the MACT floor PM emissions limits for each source type, we developed a total metal HAP emissions limit for each source type that is based on the performance of the MACT floor unit. Each total metal HAP limit is equivalent to the corresponding MACT floor PM emissions limit. We used this calculation to develop alternative limits for total metal HAP for melting furnaces and pouring operations.

The basis of this alternative emissions limit is the MACT floor determination for PM emissions. Because we lack sufficient test data for metal HAP, we could not otherwise derive a metal HAP emissions limit without first identifying the MACT floor unit on the basis of its PM emissions performance. Therefore, we concluded that this total metal HAP emissions limit is an alternative to the PM emissions limit, and not an additional MACT floor requirement.

We developed a distribution of the PM emissions for each emissions source based on the actual performance of the unit identified as the 6th percentile unit and the same 0.4 relative standard deviation used to determine the MACT floor performance limits. A separate distribution based on the available metal HAP emissions data was developed to characterize the total metal HAP content of the emitted PM. Using Monte Carlo techniques, 5,000 randomizations were generated for each of these distributions and the projected metal HAP emissions were calculated for each of the 5,000 randomizations. This is a common statistical approach for establishing a distribution for a parameter that is dependent on multiple, variable parameters.

As with the MACT floor determination of PM emissions performance, we selected the 99th percentile metal HAP concentrations determined from these distributions. These metal HAP emissions limits were equivalent to approximately 8 percent of the 99th percentile PM emissions limit (*i.e.,* the MACT floor PM emissions limit) for each of the emissions sources. That is, this analysis indicated that the total metal HAP emissions limit that is equivalent to the MACT floor PM emissions limit can be calculated by multiplying the PM emissions limit by 0.08 (*i.e.,* assuming the PM is 8 percent metal HAP). The final metal HAP emissions limits were rounded to one significant digit in keeping with the relative accuracy of the assessment.

As the identification of the unit that represents the MACT floor is solely dependent on the PM emissions performance, these metal HAP emissions limits do not represent a separate MACT floor that must be met at all emissions sources, but rather an alternative emissions limit that is equivalent to the MACT floor PM emissions limit. The alternative metal HAP emissions limits provide foundry operators with more flexibility in meeting the metal HAP emissions limits (for example, by adopting a scrap program that is more stringent than the MACT requirement, in conjunction with PM emissions controls to further reduce metal HAP emissions). This alternative also avoids, in some cases, the need for replacing well-performing venturi wet scrubbers with high efficiency baghouses to achieve a required PM emissions reduction when other measures might be used to achieve the desired metal HAP emissions reduction. The alternative also accommodates facilities that may have disproportionate PM emissions but low HAP emissions, as in the case for dry scrubbers used to control sulfur dioxide.

Comment: More than twenty industry commenters opposed the proposed carbon monoxide (CO) emissions limit for cupolas (200 ppmv). Several of these commenters stated that CO data from CEMS and CO monitors show that the limit cannot be achieved. They explained that the cupola operation is a dynamic process that is affected by changes in the melt rate and iron chemistry, which requires the CO combustor to adjust and seek a new equilibrium; CO concentrations are highly variable even in the best afterburner systems. The material being melted, coke sources, and seasonal adjustments also affect CO emissions. One vendor stated that his company could not guarantee equipment that can meet the 200 ppmv CO emissions limit. The commenters also suggested that the CO limit is based on the Illinois emissions standard, which was found to be improperly derived and never enforced.

Five commenters stated that EPA failed to provide sufficient data that maintaining a CO concentration of 200 ppmv is an effective surrogate for organic HAP destruction, while two commenters supported the use of CO as a surrogate for HAP. One commenter asked why VOC was not used as the surrogate for organic HAP emissions from the cupolas.

Response: The proposed CO emissions limit was based upon the emissions source test data for CO emissions from cupolas; it was not based upon the Illinois CO emissions limit. Two of the CO emissions tests used to develop the 200 ppm CO emissions limit were from foundries located in New Jersey, where CO CEMS are required. Therefore, EPA requested CO CEMS emissions data from these foundries to verify the performance of these systems and to better understand the variability associated with the process. Data were received from one of these foundries which supported the assertion that the 200 ppmv limit did not adequately accommodate the variability in the process operations and control device performance. Additionally, emissions test data were

also received from a cupola-afterburner system that measured CO and VOC (minus methane) emissions concurrently. For the individual runs of this test, the average outlet CO concentrations were 701, 1470, and 849 ppmv, while the average VOC emissions were 3.4, 4.2 and 5.1 ppmv as propane. This limited data supports the industry commenters' assertion that organic HAP emissions (as indicated by VOC emissions) are not well correlated, although there is a limited range of CO and VOC emissions considered in this single emissions test.

As discussed in the preamble to the proposed rule, CO is an indicator of good (complete) combustion, but, at some lower level of CO, further reductions in CO concentrations do not necessarily result in further reductions of organic HAP. That is, we recognize that CO is not a perfect surrogate for organic HAP emissions from the best-performing units, but it is a surrogate for which emissions data were available and one that provides a reasonable indication of adequate combustion characteristics. However, based on the comments and the additional data received, we agree that we do not have sufficient data to support the establishment of a specific CO concentration limit as a surrogate for the organic HAP emissions performance of a cupola afterburner system.

We reviewed the submitted data and other data in the docket for VOC and organic HAP for the best-controlled cupolas (those using afterburners). These data are too limited to identify the level of performance of the best-performing units or to establish a specific organic HAP or VOC emissions limit. Therefore, we rely on our experience with the performance of thermal destruction systems such as these afterburners. This experience clearly indicates that these units should be able to meet a 98 percent destruction efficiency or an outlet concentration of 20 ppmv (as the chemical emitted), whichever is less stringent. However, due to safety issues associated with typical equipment configurations, sampling between the cupola chamber and the afterburner is impracticable and unsafe. Therefore, we provide only the 20 ppmv exhaust concentration alternative. The limited available data on organic HAP emissions from cupola afterburners suggest that the 20 ppmv emissions limit is achievable and reflects the level of performance of the best controlled units, and that the 98 percent reduction alternative is not needed for this application.

Furthermore, we establish this emissions limit as the sum of all volatile organic HAP (or VOHAP) emitted, thereby eliminating the need to select a surrogate. However to provide flexibility in conducting the performance tests, we are providing compliance alternatives to allow for demonstration of compliance using test methods to measure TGNMO or TOC concentrations (in ppmv as hexane). These test method alternatives will measure both HAP and non-HAP compounds, and will, therefore, ensure that a unit is meeting an emissions level as stringent or more stringent than the VOHAP emissions limit. However, these test methods are cheaper and easier to perform, and therefore, these options may be desirable for some sources. Hexane was selected for the concentration equivalency because the primary HAP expected to be emitted are C6 hydrocarbons or higher (*e.g.,* benzene, toluene, and xylenes).

Comment: While one commenter supported the proposed rule requirement for direct measurement of CO emissions from cupolas using a CEMS, many industry commenters were opposed. They argued that the final rule should include an operating limit for the afterburner temperature measured by a CPMS. According to the commenters, a CO CEMS is not technically feasible or reliable because of the harsh conditions of the gas stream, and it is costly while achieving minimal benefit.

Response: We have deleted the requirement for a CO CEMS from the final rule because the CO limit has been replaced by a limit for VOHAP emissions. The autoignition temperature of the organic HAP present in the cupola exhaust stream (primarily benzene, toluene, and xylenes) is lower than the autoignition temperature of CO, which is 1,300 °F. Therefore, an adequately designed afterburner operating at a minimum of 1,300 °F will effectively ensure combustion of the organic HAP. Once a performance test indicates that the cupola afterburner is sufficiently engineered (in terms of excess air flow, residence time and mixing) to achieve the required VOHAP emissions limit, then continuous monitoring of combustion zone temperature will provide adequate assurance of continuous compliance. Therefore, we require foundry operators to install and operate a CPMS for combustion zone temperature, and we require that the 15-minute average combustion zone temperature must not fall below 1,300 °F. Periods when the cupola is off blast and for 15 minutes after going on blast from an off blast condition are not included in the 15-minute average.

Comment: Several industry commenters objected to the proposed VOC emissions limit for scrap preheaters (20 ppmv as propane or 98 percent reduction). The commenters contended that the VOC limit based on afterburning technology does not meet the requirements for determining the MACT floor because only 4 or 5 of 169 preheaters nationwide (3 percent) currently use afterburners. The commenters stated that there is no basis for the proposed limit, there are no data indicating the presence of organic HAP in preheater emissions, and improvements in direct flame preheaters have made the afterburners an outdated technology. Commenters also stated the existing units cannot achieve 20 ppmv because of process variability and the likely presence of uncombusted methane from the preheater, which can contribute significantly to the VOC concentration, especially when measured as propane.

Response: Based on the information available at the time the proposed rule was developed, it appeared that more than 6 percent of the scrap preheaters were controlled by afterburners. However, we have confirmed that, as the commenters suggested, one foundry that had reported using afterburners had subsequently upgraded their material handling system and installed direct flame preheater systems. With this change, the median of the top 12 percent of units is no longer a unit using an afterburner, but a unit using a direct flame preheater.

There are two basic types of preheater designs: direct flame contact preheaters and hot gas flow preheaters. Direct flame contact preheaters primarily use gas-fired burners where the flame impinges on the scrap. The primary heating mechanism for direct flame contact preheaters is the burner flames contacting the scrap. Hot gas flow preheaters may use gas-fired burners or electricity to heat air and the hot air (and combustion gases from the burner, if applicable) is used to preheat the scrap. In hot gas flow preheaters, the scrap is not heated by direct contact with a high temperature flame. Preheaters are used primarily to remove water and organic contaminants that could cause explosions or other hazards when the scrap is melted in induction furnaces. Although both types of preheaters are effective for this purpose, the different preheater designs have different HAP emissions potentials.

For preheaters generally, we require a scrap selection and inspection program to limit, to the extent practicable, the amount of organic HAP precursors (*i.e.,* oils and other organic liquids) entering

a scrap preheater, and we are establishing a work practice standard to require either preheaters with direct flame contact or application of an afterburner. Because the scrap selection and inspection program cannot completely exclude the potential presence of tramp organic materials, scrap preheaters are a potential source of organic HAP emissions. Furthermore, we could not identify specific scrap selection and inspection programs for these types of scrap materials that would be more effective than those proposed. Therefore, the primary variable affecting the organic HAP emissions from scrap preheaters is the preheater design. Additionally, it is not feasible to capture and convey emissions from all preheaters at existing foundries because of certain design and operational constraints, such as preheaters with moving grates, interferences with overhead moving cranes, and lack of space. However, preheaters at new foundries can be designed to capture and convey emissions prior to construction.

Based on an engineering assessment of the scrap preheater designs and control systems, units that operate with an external combustion system (afterburner) are expected to be the best performing for organic HAP emissions. The next most effective control is the use of direct flame contact preheaters, which have lower organic HAP emissions than hot gas flow (indirect heating) preheaters because organic contaminants in the scrap are thermally destroyed by direct contact with the preheater flame. We ranked scrap preheater systems according to their projected organic HAP destruction efficiency based on the heating methods that are used. From this analysis, we identified the MACT floor unit as one that uses natural gas, direct flame, scrap preheating (used at well over 12 percent of existing sources). The direct flame contact provides efficient destruction of organic HAP, and organic HAP control is improved when combined with the requirements of the scrap selection and inspection program. Moreover, many of the direct flame contact preheaters use an open burner design where the burners are directed onto the scrap, even when the preheater uses a moving grate system where it is not feasible to collect the emissions through a conveyance. Therefore, we believe a work practice standard is appropriate, and we are requiring foundry owners and operators to use direct flame contact preheaters. However, we are allowing foundries to use a properly designed and operated afterburner as a compliance option for the preheater MACT standard because an afterburner on either a direct flame or indirect flame preheater will result in better control of organic emissions than the use of direct flame preheating alone. This option is reflected by an alternative standard of 20 ppmv VOHAP. Furthermore, we also conclude that afterburners are not a cost-effective ''beyond-the-floor'' technology for existing preheaters based both on the costs associated with redesigning the burner configuration to allow capture and control of the emissions and the small amount of additional emissions reductions achieved by the additional afterburner control.

The MACT floor for scrap preheaters at new sources, however, is still based on an afterburner control system. As discussed when considering the performance limits for cupola afterburners, we believe that a 20 ppmv emissions limits is still appropriate, but that the 20 ppmv limit should be based on specific VOHAP and should not necessarily include uncombusted methane emissions.

We have acknowledged that all foundries cannot completely eliminate organic contaminants from their scrap. However, some foundries use only scrap that can be certified to be free of the organic contaminants. In the final rule, we distinguish two general grades of scrap in the scrap selection and inspection program. Under a certification program, foundries can certify that they use only certified-metal ingots, pig iron and similar material that do not contain organic contaminants. Foundries that use scrap without organic contaminants will not generate organic HAP emissions from their scrap, regardless of the type of preheater used. Most foundries that use this type of material are small production foundries, and most of these are not major sources of HAP emissions. However, this may be a potentially viable alternative for some major source foundries as well. Therefore, we provide a compliance option for scrap preheaters that charge only clean scrap as described by the certification alternative in the scrap selection and inspection program. The compliance option for scrap preheaters that charge clean scrap at new and existing iron and steel foundries is the work practice of charging only material that has been certified to comply with the scrap certification alternative in the scrap selection and inspection program.

In summary, based on comments received and changes in the control configurations used at the top 12 percent of scrap preheaters, we revised the organic HAP MACT floor for scrap preheaters. The MACT floor for scrap preheaters at existing sources is the work practice of using a gas-fired preheater in which the gas flame directly contacts the scrap. Alternatively, scrap preheaters at existing sources can meet a 20 ppmv VOHAP emissions limit (with alternatives of measuring TGNMO or TOC as hexane as a surrogate for VOHAP). MACT for scrap preheaters at new iron and steel foundries is the 20 ppmv VOHAP emissions limit. Also, we provide an alternative compliance option for preheaters at new and existing foundries that charge only clean scrap as described in the certification alternative of the scrap selection and inspection program. In this case, owners or operators need only certify that their preheater heats only scrap as described in the scrap certification alternative.

Comment: Several commenters opposed the requirement for direct measurement of VOC emissions from scrap preheaters and pouring, cooling, and shakeout (PCS) lines. The commenters believed that CEMS are not practical for scrap preheaters or justifiable (technically or economically) for PCS lines. Some commenters noted that VOC measurements for scrap preheaters and PCS lines would be more accurate with calibration by xylene or toluene rather than propane. One commenter explained that most HAP emitted from foundries have six carbons or more. Therefore, the VOC measurement should be calibrated with toluene or xylene as these would provide a better measure of VOC emissions than propane.

Response: The point concerning the representativeness of propane to characterize the HAP emissions is well-taken. Even though a wide variety of HAP are expected to be emitted from these sources, an analysis of the available VOHAP emissions data indicate that the average carbon number for the VOC emitted from these operations is six. Additionally, the historical documents where EPA has established the 20 ppm VOC emissions limit indicates that it was established by compound exit concentration rather than by a specified indicator of VOC, such as propane. Therefore, based on the available data and a review of the basis for VOC measurements, we have adjusted the organic HAP emissions limits to either measure VOHAP concentrations directly or to measure TOC using hexane as the calibration gas (*i.e.*, measure VOC outlet concentrations as hexane or C6 equivalents) as a surrogate for VOHAP. These organic HAP emissions limits now apply to cupolas (at new and existing foundries),

scrap preheaters (at new foundries and as an alternative at existing foundries), and automated conveyor and pallet cooling lines and automated shakeout lines that use sand mold systems (at new foundries).

Although a VOC CEMS is technically feasible for these applications, especially for new foundries, a review of the relative costs associated with these monitoring requirements compared to the control equipment costs to achieve the emissions limits does not appear to justify the requirement to install and operate VOC CEMS for cupola afterburners or scrap preheaters. Furthermore, for cupolas and scrap preheaters which use thermal destruction, the combustion zone (or flame) temperature provides an excellent indicator of on-going control device performance. Therefore, alternative continuous parameter monitoring requirements for these emissions sources can be used that will ensure continuous compliance with the emissions limit without undue additional costs. No alternative continuous parameter monitoring requirement could be identified for the cooling and shakeout operations. As the organic HAP emissions limits only apply to automated conveyor and pallet cooling lines and automated shakeout lines that use a sand mold system at a new iron and steel foundry, we maintained the VOC CEMS requirement for these emissions sources. We provide options to either meet the 20 ppmv VOHAP limit directly using the VOC CEMS (measuring total hydrocarbons as hexane) or to develop an equivalent site-specific VOC CEMS emissions limit based on the results of the VOHAP emissions measured during the performance test. The VOC CEMS actually measures total hydrocarbons, which includes non-HAP compounds. As a result, using a VOC CEMS to directly measure total hydrocarbons may be more stringent than the site-specific VOC limit correlated to measured VOHAP emissions.

We also included procedures in the final rule that will allow other monitoring methods to demonstrate compliance with the VOHAP emissions limit. For example, if you use a carbon adsorption system to control organic HAP emissions, appropriate monitoring parameters may include carbon breakthrough by replacing the carbon at specified frequencies. Other compliance methods, such a pollution prevention (P2) techniques, also may be used to meet the VOHAP emissions limit. If you use P2 techniques, appropriate monitoring methods may include measuring loss on ignition or recording the type of binder formulation used, total chemical usage rate, and/or chemical usage rate per volume of sand. If through P2 measures you can eliminate all HAP emissions from the emissions source or you can demonstrate continued HAP emissions reductions equal to or better than the MACT level of control, you may be eligible for a P2 compliance alternative under amendments to the NESHAP General Provisions (40 CFR part 63, subpart A). These amendments were proposed on May 15, 2003 (68 FR 26249).

The procedures in the final rule require that you submit a monitoring plan that includes a description of the control technique (or P2 measures), a description of the continuous monitoring system or method (including appropriate operating parameters to be monitored), test results demonstrating compliance with the emissions limit, operating limit(s) if applicable determined according to the test results, and the frequency of measuring and recording to establish continuous compliance. If applicable, you also must include operation and maintenance requirements for the monitor(s).

Pouring, Cooling, and Shakeout

Comment: Several commenters requested that we clarify the applicability of the emissions limits with regard to ''pouring areas'' and ''shakeout.'' In general, large area casting producers requested that we remove reference in the definition of ''pouring area'' to maintaining the molds in a stationary position through cooling. One commenter requested that the definition for ''shakeout'' be revised to indicate that it is a mechanical operation, typically automated, and does not include manual operations that dismantle or separate castings from molds as seen in pouring areas. The change is needed because otherwise such manual operations may be subject to the requirements for new lines; however, it is infeasible to capture and control these operations, especially when they involve large castings in a pouring area.

Other commenters pointed out that centrifugal and permanent molds have very low organic content compared to sand molds. The commenters recommended that these systems be subcategorized and stated that the MACT floor for pouring, cooling, and shakeout for these operations at new sources would be no control.

Response: We agree with some of the commenters suggestions for clarifying definitions. We examined the data and found that no cooling lines associated with floor or pit molding operations are currently controlled for organic HAP emissions. Of the three cooling lines that have end-of-pipe controls, two are automated conveyor lines and one is a pallet line. One of the foundries that has a carbon adsorption unit performs both pallet and floor molding; however, only the pallet cooling line is controlled.

Based on this information and in response to comments, we removed the proposed rule definition of ''pouring, cooling, and shakeout line'' and adjusted the proposed rule definition of ''pouring area'' to clarify that it includes floor and pit molding processes. In addition, the molds in a pouring area do not have to remain stationary for the duration of mold cooling. We also adjusted the proposed definition of ''pouring station'' to clarify that it means the fixed location to which molds are brought by an automated conveyor or pallet molding line. We added a definition for ''automated conveyor and pallet cooling line'' (*i.e.*, cooling lines associated with pouring stations) and ''floor and pit cooling operation'' (*i.e.*, a cooling operation associated with a pouring area). We also removed the proposed rule definition of ''shakeout'' and added a definition for ''automated shakeout line'' that distinguishes automated shakeout operations from manual knockout operations. The purpose of these revisions is to clarify that the 20 ppmv VOHAP limit for a new iron and steel foundry applies only to automated conveyor and pallet cooling lines and to automated shakeout lines.

As discussed in the BID for the final standards, permanent and centrifugal molds have significantly lower organic HAP emissions than green sand molds. Our re-evaluation of new source MACT for organic HAP demonstrates the need for a subcategorization of permanent and centrifugal molds for cooling and shakeout. For this reason, we also adjusted the VOHAP limit for new foundries to apply only to lines (automated conveyor and pallet cooling lines and automated shakeout lines) that use a sand mold system.

Capture Systems

Comment: Several commenters stated that the requirement of a minimum face velocity of 200 feet per minute (ft/min) has no underlying MACT floor basis and that it does not account for variability. Numerous commenters stated that a blanket requirement of 200 ft/min is not universally applicable and it is not consistent with good engineering design. Other commenters stated that the capture requirements creates a safety hazard, increases energy requirements

(for building heating and air conditioning), and creates defects in the castings (especially during pouring).

Several commenters noted that indoor air quality is regulated by other agencies and stated that when a process is operated in a manner that limits worker exposure (*e.g.*, so as to comply with standards established by the Occupational Safety and Health Administration), then there is no basis for requiring stricter capture and ventilation standards. Another commenter noted that adjustments to individual fans for workers, which were installed for worker comfort, can change air flow in the surrounding area and impact face velocity, making it difficult to maintain compliance with the standard. Consequently, the requirement to maintain a minimum of 200 ft/min face velocity would require much higher design and operating face velocities in order to ensure continuous compliance, increasing energy consumption with no demonstrable environmental benefit.

A few commenters stated that it was technically infeasible to install close capture hoods on their induction furnaces, pouring stations, or pouring areas due to process configurations and accessibility limitations. The only option would be to evacuate the entire building at huge costs and energy requirements for very limited HAP emissions reduction.

One commenter noted that their foundry has reduced VOC and HAP emissions by judicious reductions in capture and collection, and that the prescriptive ventilation requirement would reduce operator flexibility and may increase HAP emissions. Another commenter noted that they had received a patent for controllers that limit air ventilation at times of lower emissions, which saves heating and energy costs without impairing air quality.

Most of the commenters recommended that the final rule require that existing capture systems be operated consistent with good engineering practices and consistent with the facility's operation and maintenance plan. Two commenters recommended requiring a best engineering design based on the "Industrial Ventilation Manual of Recommended Practice.''

Response: Due to the comments received regarding the capture system requirements, we have decided to eliminate the 200 ft/min capture velocity requirement. In the final rule, we require that capture systems be designed and operated according to accepted engineering practices, such as the "Industrial Ventilation Manual of Recommended Practice.'' Periodic inspection, maintenance, and continuous parametric monitoring are required to ensure they are properly operated and maintained on a continuing basis.

Additionally, we agree that there are process configurations and designs for which capture is infeasible, impractical, and ineffective. For example, capture systems at some iron and steel foundries would interfere with the movement of overhead cranes used to move large molds. Some pouring areas cover several thousand square feet, which makes capture impractical because of the enormous evacuation rate that would be needed. Physical constraints and space limitations, such inadequate clearance between equipment and structural columns, also pose problems for installing capture systems. For operations that cannot feasibly be captured, the emissions from the operation are released into the interior of foundry buildings and may be emitted as fugitive emissions through roof vents, doors, and other openings. We specifically require control of such fugitive emissions as described above.

Opacity Limit

Comment: Several commenters recommended that fugitive emissions from miscellaneous sources not be included because the control of these emissions would be costly and will not contribute to a significant reduction in HAP emissions. These commenters do not believe an opacity limit for fugitive emissions is necessary or appropriate. One commenter noted that an opacity limit of 5 percent would be beyond the MACT floor. The commenter stated that they have two plants regulated under a single permit that included a 5 percent opacity limit as a condition to proposed modifications. Modifications have been completed to one of the plants to meet this limit and modifications are planned at the other plant (at an investment of $3 to $11 million) to enable them to meet the permit limit by December 2004.

On the other hand, two commenters stated that EPA needs to set a limit for fugitive emissions and also develop work practices to control fugitive emissions. One of the commenters submitted a summary of dust analysis results surrounding a steel foundry indicated elevated levels of several HAP, including chromium (total), lead, manganese, and nickel, near the foundry. The commenter suggested that these elevated metal HAP emissions are due largely to uncontrolled fugitive emissions from the foundry.

Response: The CAA directs EPA to establish standards under section 112(d) to reduce emissions of HAP from stationary sources, and expressly includes fugitive emissions. Our data indicate that there are significant sources of fugitive HAP emissions at iron and steel foundries. Fugitive HAP emissions from iron and steel foundries include un-captured metal fumes from metal melting and pouring operations. The available emissions data clearly demonstrates that metal fumes from these sources contain metal HAP including manganese, lead, and other heavy metals. Additionally, commenters have submitted data regarding the elevated HAP content in dust surrounding one foundry, and suggested that fugitive emissions may have contributed to these high HAP concentrations. In general, it is clear that fugitive emissions contribute to the overall HAP emissions from foundry operations. Moreover, such fugitive emissions are often subject to emission limitations.

Our evaluation indicates that these fugitive emissions have been effectively regulated by establishing opacity limits. We examined State regulations for fugitive emissions and found that almost all States apply an opacity limit for the buildings that house the process equipment. We ranked the regulations and chose the most stringent (Michigan's limit of 20 percent with one exception per hour up to 27 percent) because at least 6 percent of the foundries are subject to this limit. This opacity limit represents the MACT floor for existing sources and is the primary standard for fugitive emissions.

This opacity limit is indicative of the achievable performance of these foundries under the most adverse circumstances that can reasonably be expected to recur. Based on observations of visual emissions at a number of iron and steel foundries, this opacity limit can be achieved at well controlled foundries. Furthermore, we know of no facility that is currently subject to, and able to meet, a more stringent opacity limit. One commenter appears to be in the process of trying to meet a 5 percent opacity, but the overall regulated facility (which consists of two plants) has yet to be able to meet this limit, and as such, we do not consider the 5 percent opacity limit achieved. Therefore, we conclude that the MACT floor for fugitive emissions from new sources is the same as for existing sources (20 percent opacity except for one 6-minute average per hour not to exceed 27 percent) because this is the emissions limit required of the best performing facility, and we believe this

emissions limit is indicative of the actual emissions limitations achieved by these facilities under the most adverse circumstances that can reasonably be expected to recur. The opacity limit applies specifically to fugitive emissions from the foundry buildings, and fugitive emissions are defined as all releases to the atmosphere that are not discharged through a conveyance.

Mold and Core Making

Comment: Several industry representatives commented that the scrubbers evaluated for MACT appeared to be operating with fresh acid solution with a pH below 2. However, contractors who recycle used TEA will not accept material with a pH less than 2. One commenter felt that recyclers would not accept the scrubber solutions because of the low pH that would result from the 1 ppmv emissions limit. Commenters also questioned the technical validity of the 1 ppmv emissions limit, especially for systems with high inlet TEA concentrations. The commenters recommended that we adjust the proposed operating limit for wet acid scrubbers to require operating within manufacturer's specifications, maintaining the pH at 4.5 or less, and assess performance in terms of percent removal as specified by the manufacturer.

Response: The commenters' point regarding the test data being representative of TEA scrubber performance with fresh acid solution is well-founded. All of the available TEA scrubber performance data was generated from tests that used fresh acid solution (pH of 2 or less). Discussions with control equipment vendors indicate that the scrubbers are designed to operate at a scrubbing solution pH of 4.5 or lower. Discussions with foundry operators, as well as the public comments received, indicate that these foundries replace the scrubbing solution when the pH reaches either 4.5 or 5, depending on the foundry. As recycling of the TEA in the scrubbing solution is environmentally beneficial, we do not want to preclude the recycling of TEA by establishing a very low pH operating limit during the performance test. Also, because the performance limits were derived from test data of systems with fresh acid solution, it is not necessarily appropriate to require foundries to meet an emissions limit with spent acid solution (*i.e.*, a pH nearing 4.5) when the data used to establish the performance limit of the scrubbers were all based on performance with fresh acid solution (*i.e.*, a pH of 2 or less). From the information collected regarding the operation of these systems, at least 12 percent of the units replace the scrubbing solution at a pH of 4.5 or less (rather than at a pH of 5 or less). No units were identified that replaced the scrubbing solution at a pH of 4.0 or less. Therefore, replacing the scrubber solution at a pH of 4.5 or less is representative of MACT floor operating conditions for these scrubbing systems at new and existing iron and steel foundries.

The data used to establish the performance of the wet scrubber systems were also limited in that we have no data for systems with inlet TEA concentrations greater than 250 ppmv. Based on comments received from both foundry and TEA scrubber vendor representatives, the TEA systems are designed to achieve a percent removal of TEA and that the 1 ppmv limit is not achievable for systems with inlet TEA concentrations in the 1,000 ppmv range or higher. We believe that these are valid concerns and that a percent reduction alternative is warranted for systems with high TEA concentrations. After reviewing the source test data and the operating parameters associated with the TEA scrubber at the best-performing sources, we concluded that the MACT floor performance of the TEA scrubbers is correctly defined as a 99 percent or more TEA removal efficiency or an outlet TEA concentration of 1 ppmv or less, as determined when the system is operated with fresh scrubbing media. These emissions limits are consistent with the available data that establish the MACT floor level of control, and the operating limits are consistent with the operation of the best-performing TEA acid scrubbers.

For these reasons, we adjusted the proposed emissions limit to require the owner or operator to reduce TEA emissions from a TEA cold box mold or core making line at a new or existing foundry by at least 99 percent or to a level that does not exceed 1 ppmv, as determined when scrubbing with fresh acid solution. We also adjusted the proposed operating limit to require that the 3-hour average pH of the scrubber blowdown not exceed 4.5. We also added compliance provisions to implement these new requirements. Plants must conduct an initial performance test to establish that the TEA scrubber is correctly designed to meet the required emissions limit and to establish the minimum flow rate of scrubbing media that must be maintained. Continuous compliance is established by maintaining the scrubber media flow rate at or above the limit established during the performance test and maintaining the pH of the scrubbing media at or below a pH of 4.5.

C. Why Did We Revise the Proposed Work Practice Standards?

Scrap Selection and Inspection

Comment: We received about 20 comments from foundries and recyclers on the proposed work practice standards. Most believed that the requirements are unnecessary because the emissions limits for organic HAP already require capture and control. They stated that cupolas are both designed for and capable of handling some of the restricted material, such as oily scrap, and a cupola is the most environmentally acceptable process in which to recycle these materials.

Response: We proposed a single scrap selection and inspection requirement regardless of the type of melting furnace used. Upon consideration of the public comments and data submitted regarding used oil filter recycling, we agree that a cupola, properly controlled with an afterburner, provides a safe and environmentally beneficial means of recycling oily scrap. That is, our test data and engineering analyses indicate that the afterburner will destroy organic compounds resulting from the melting of oily scrap. Therefore, we have included a specific provision that allows oily scrap in cupolas as long as it is drained of free liquids and an afterburner is used that meets specific design and operating requirements to ensure destruction of organic compounds.

Comment: Several commenters recommended that we include additional specifications or a requirement to ensure that no mercury switches are included in the scrap. These requirements are needed to reduce mercury emissions from the furnaces. These commenters provided information on programs to remove mercury switches from automobile scrap and the potential reductions in mercury emissions when this scrap is melted. Other commenters stated that restrictions on HAP metals in scrap were unnecessary because the melting furnaces have PM controls and are subject to emissions limits for PM.

Response: Although there are provisions for metal HAP emissions control for all furnace types, mercury is not well-controlled by these control systems because of its volatility. We agree with the commenters that removing mercury switches from automobile scrap is the best technique to reduce mercury emissions from melting furnaces. We researched programs currently in place for the removal of mercury switches. We found that there are some mandatory and voluntary programs that are being

implemented by the States to remove mercury switches from end of life vehicles. However, we could not confirm that the removal of mercury switches would be part of the floor of a scrap inspection program for iron and steel foundries because some programs were voluntary and others affected scrap recyclers rather than foundries. We evaluated the costs and emissions reductions of mercury switch removal and found that the removal of mercury switches associated with convenience lighting was cost effective. The switches are readily accessible, and for automobiles manufactured in 2001 and earlier, they account for the vast majority of mercury in automobile components. We estimate that such a program could achieve annual mercury reductions of 2,800 pounds at an annual cost of only $3.6 million. This evaluation indicates that it is a reasonable and cost effective beyond-the-floor alternative. Consequently, we incorporated requirements into the scrap inspection program to address the removal of mercury switches from under hoods and trunks.

We also considered the feasibility of the removal of the small amount of mercury that may be used in flat panel displays used in entertainment and navigation systems and in some headlamps. These uses of mercury comprise only 1 percent of that used in automobiles historically, such as convenience light switches. The small amount of mercury, poor accessibility to the mercury, and the costs of removal indicated that removal of mercury from these small applications was not a cost effective alternative for beyond the MACT floor.

There are several other efforts underway to reduce the use of mercury switches in automobiles and to remove them from end of life vehicles. The U.S. automobile industry has committed to removing mercury convenience lighting switches from new automobiles. The Alliance of Automobile Manufacturers (a trade association of car and light truck manufacturers) reports that the use of mercury in automobile components has been reduced to 1 percent of the level used in the 2001 calendar year. Several States and EPA have initiated programs, such as legislative efforts, pilot projects, and outreach campaigns to facilitate the removal of mercury switches from automobile scrap, which is particularly important for vehicles manufactured in 2001 and earlier. These efforts supplement the scrap inspection program in the final rule and will help to ensure continued reductions in mercury emissions in the future.

Several commenters also expressed concerns that lead may not necessarily be well-controlled by these systems depending on the operating temperatures of the control system. Although the data for the two cupola control systems that we tested indicated excellent control of lead emissions, experience with a variety of PM control systems at other industries (but similar types of emissions) indicate that lead removal efficiency may be reduced at higher temperatures. In addition, many plants already limit and inspect for lead components, and many such components are identifiable in scrap. Our analysis of the practices currently used by iron and steel foundries indicates that preventing or removing identifiable lead components in scrap is part of the MACT floor. Therefore, we have included requirements restricting lead components in scrap. However, we have eliminated restrictions for other metal components, such as galvanized parts, both because it is difficult to distinguish these parts from other scrap metals and because the metal HAP that might be released during the melting process are low in volatility and are well controlled by PM control devices over the range of temperatures that these devices operate.

Comment: Numerous commenters recommended that we write the final rule to include specifications with restrictions on the amount of free liquids, grease, oil, and plastic parts; procedures to inspect a representative number of scrap shipments (*e.g.*, 10 percent), and procedures to ensure that oily turnings are properly drained of free liquids. These commenters also stated that the requirement to perform the inspections at the best vantage point was nebulous and makes compliance difficult to ensure. One commenter requested that we write the final rule to exempt any foundry from the scrap inspection and recordkeeping requirements if they use certified metal ingots that do not contain HAP.

Response: We reconsidered the practicality and, in some cases, the vagueness of the proposed scrap inspection program. These commenters have offered several suggestions that will improve the program, and we have written the scrap selection and inspection requirements to incorporate many of these suggestions. For example, we realize it is impractical and almost impossible to inspect all shipments, so we require inspection of representative shipments (but not less than 10 percent of the shipments). The undefined best vantage point for performing the inspections has been revised to a reasonable vantage point. We also clarified that a continuing scrap inspection program is not necessary for those foundries that do not use scrap containing the HAP generating contaminants if they meet compliance certification requirements for their furnace charge materials. These adjustments and the resulting requirements are consistent with the practices at the best-controlled foundries and are representative of the MACT floor.

Comment: Several commenters requested that EPA require foundries to implement the work practice requirements that will reduce mercury emissions (*i.e.*, scrap selection and inspection program) within 1 year of the effective date. The commenters pointed out that most foundries already have these programs in place and no control equipment is needed that might require more time to install. Implementing these requirements sooner would result in greater reductions in mercury emissions especially considering the phase out of mercury switches in new automobiles.

Response: We agree with the commenters' suggestions and see no reason why foundries can not implement the scrap selection and inspection program or certification requirements sooner. While owners or operators of iron and steel foundries are provided 3 years after the effective date of the final rule to comply with other requirements, we are requiring that existing iron and steel foundries comply with the scrap selection and inspection program in § 63.7700(b) or the certification requirements in § 63.7700(c) within 1 year of the effective date of the final rule.

Mold and Core Making

Comment: Several commenters opposed the proposed requirement to manually light off molds because some molds do not produce gases that will support combustion, and they would automatically ignite if they were combustible. It is not practical to inspect each mold vent at high production foundries, and in some cases, hoods or enclosures make it impractical and unsafe to manually ignite and inspect vents. Some commenters stated that the requirements are burdensome and unclear with respect to how to demonstrate compliance (*e.g.*, how quickly they must be lit, how long must they burn, and does the requirement depend on mold size and binder type). Others stated that EPA has not demonstrated that mold light off represents the MACT floor and presented no data to show that HAP emissions would be reduced.

Response: From our observations of foundry operations, ignition of mold vents was a standard operating procedure, although we recognize that ignition of mold vent gasses generally occurs spontaneously. In reviewing the public comments, it is evident that the requirements, as proposed, had several significant short-comings. For foundries with mold vents that are not ignitable, there must be a mechanism to document this fact, they should not be required to try to manually ignite every mold vent, and it should not be necessary to keep records of which mold vents did not ignite. In addition, we did not intend to endanger the safety of the workers through this requirement. Finally, we did not intend to limit mold light off to only manual means. The use of natural gas pilot flames in automated cooling lines to light off mold vents is certainly acceptable; consequently, we adjusted the requirement to manually ignite the gases.

There is no doubt that mold vent gases contain HAP and that the ignition of the mold vent gases will reduce the HAP emissions that occur due to mold off-gassing. Therefore, we have not eliminated requirements for mold vent light off, but we have significantly revised the requirements. The final rule incorporates the mold vent ignition requirements into the O&M plan. The plan must include procedures for providing an ignition source to mold vents unless the owner or operator determines the gases either are not ignitable, ignite automatically, or cannot be ignited due to legitimate accessibility or safety reasons. Criteria are included for determining ignitability. The final rule requires that foundries document and maintain records of this determination.

Coating and Binder Formulations

Comment: We received one comment supporting the proposed requirement for non-HAP coating formulations. We also received many comments from industry representatives opposing the total elimination of HAP. Most of these commenters asked us to allow HAP compounds in small percentages in coatings when they are needed to achieve the physical and chemical properties required by the coating specifications. One commenter explained that there is a small but specialized need for methanol-based coatings. The methanol-based coatings are designed for light off in which the flammable components are consumed so that minimal methanol is released to the environment. Methanol used as a carrier in the coating could be replaced, but not methanol used as an active ingredient in the coating. While methanol has been replaced in many cases by water, methanol in small quantities is needed in coatings as a biocide or surfactant. Several commenters suggested that Material Safety Data Sheets be used to satisfy recordkeeping requirements.

Response: After considering the numerous comments and the technical details associated with this issue, we concluded that we could not show that prohibiting methanol in this application would be a cost-effective beyond-the-floor option. In addition, we cannot show that it is technically feasible in all cases, considering the specialized use of methanol in some applications and the unknown effect on the quality of certain products that must meet coating specifications. For these reasons, we deleted the proposed requirement for non-HAP coating formulations from the final rule. Consistent with our intent to have foundries consider the HAP content and potential HAP emissions from their coating formulations, we are applying recordkeeping requirements to HAP used in coatings. These include requirements to record annual chemical usage rates for each binder system, annual HAP specific usage rates for each binder system, and total HAP usage rate by the foundry. These records will identify those systems with the highest HAP usage rates and make it easier for foundries to focus on opportunities to reduce the HAP content.

Comment: Several commenters said the no methanol requirements placed on furan warm box binder systems should be removed because they were beyond the floor and had not been justified. Also, there is no assurance that binders without methanol can provide the quality of castings that is needed. The commenters explained that the catalyst portion of the binder system is water-based in most current formulations, but the resin portion of the binder system typically contains up to 5 percent methanol as a stabilizer for the resin. Therefore, the no methanol requirement for furan warm box systems should be clarified to limit the requirement of no methanol only to the catalyst and should allow up to 5 percent methanol in the resin material. One commenter recommended that EPA defer all specific binder reformulation requirements until residual risk standards; this will allow time to complete testing on low-emitting binder systems. Another commenter recommended that all specific binder reformulation requirements be deleted because they limit greener alternatives from being evaluated.

Response: The proposed no methanol requirement was not based on a beyond-the-floor analysis; it was based on the fact that over 40 percent of the mold and core making lines using the furan warm box system (based on responses to a detailed industry survey) had switched from a methanol-based catalyst. However, it appears that we mischaracterized the extent to which methanol can be eliminated from the furan warm box system. The survey responses used to establish the MACT floor specifically indicated that the conversion was performed only for the catalyst portion of the binder system. The comments we received verify that conversion to a no-methanol or water-based catalyst is technically feasible. Therefore, we revised the requirement for furan warm box binder systems to indicate that foundries must use a furan warm box catalyst that does not include methanol as a specific ingredient as listed in the Material Data Safety Sheet. We also revised this provision to clarify that the requirement does not apply to the resin portion of the binder system. Methanol is allowed in the resin portion of the binder system. The final rule also requires plants to maintain records of all catalyst binder formulations.

Comment: While one commenter supported the proposed requirement for naphthalene-depleted solvents in binders for phenolic urethane cold box or nobake mold or core making lines, several commenters opposed the requirement. According to these commenters, EPA should delete the requirement because it is beyond the floor and unjustified. Three commenters stated that naphthalene-depleted solvents may increase VOC emissions and that EPA had underestimated the cost. One commenter added that the proposed requirement would be ineffective because naphthalene-depleted solvents contain other HAP. The proposed requirement may require expensive tooling modifications and product testing if cores are changed, and there is no assurance that binders without naphthalene will be capable of providing the quality of castings that is needed, will work at all foundries, or will be available for all major source foundries. Some commenters recommended that EPA encourage environmentally friendly resins using New Source Review Clean Technology concepts and have foundries report on the results. Others recommended requiring a study or deferring the requirement until the residual risk is evaluated.

Response: Based on a review of the comments and upon further analysis, we determined that the requirement for naphthalene-depleted solvents is not warranted. First, the naphthalene-

depleted solvent does not provide the same characteristics as the traditional phenolic urethane base solvent and, therefore, may not achieve acceptable quality castings in all applications. Second, we feel we underestimated the cost of the required binder system substitution by not considering the cost to recertify the castings through a production parts approval process. Third, we may have overestimated the amount of HAP emissions reductions that are achievable by the use of the naphthalene-depleted solvent. Therefore, we feel that we cannot require that all phenolic urethane binder systems be converted to a naphthalene-depleted solvent. In addition, the requirement to convert solvents is not a cost-effective alternative; consequently, we rejected the use of naphthalene-depleted solvents as a beyond-the-floor requirement. Therefore, this specific requirement has been removed from the final rule. With this change, almost all of the concerns expressed by the commenters have been addressed.

Comment: Several commenters recommended that the binder system evaluation requirements be deleted. The mold and core binder assessment is a beyond-the-floor requirement with no economic cost-effectiveness demonstration, imposes a heavy burden on the foundry, and is written in a manner subject to interpretation and potential compliance actions. The MACT floor is mostly no change in formulation. Most of these commenters state that EPA does not have the authority to require a re-evaluation every 5 years because MACT standards are to represent a one-time identification of the technologies currently available.

Response: We felt that foundries routinely evaluated alternative binder systems to identify systems that might help to reduce costs, speed production, improve casting quality, and reduce defects. Primarily, we wanted foundries to include in this process an evaluation of the potential HAP emissions and factor in these HAP emissions reductions in the process of selecting an appropriate binder system. However, as proposed, the requirement was too broad (evaluate all binder systems) and too vague (what is a reduced-HAP binder system?) to be practically implemented. As we attempted to craft this requirement into something that could be reasonably implemented without undue burden, we still struggled with numerous questions: what is a reduced-HAP binder system; do we consider emissions only from mold curing or from both mold making and subsequent releases from cooling and shakeout; and how do we define what is technically and economically feasible?

After considering the numerous comments and the technical details associated with this issue, we concluded that any prescriptive requirement we developed would not be a cost-effective beyond-the-floor option. Consistent with our intent to have foundries consider the HAP content and potential HAP emissions from their binder formulations, we are requiring foundries to record the annual chemical usage rates for each binder system employed at the foundry, the annual HAP specific usage rates for each binder system, and the total annual HAP usage rate by the foundry. These records will identify those systems with the highest HAP usage rates and make it easier for foundry owners or operators to focus on opportunities to reduce HAP content. This information can also be considered when alternative binder systems are routinely evaluated for reasons related to production, cost, and quality. In addition, these data will also help to further address mold and core making emissions, if necessary, under section 112(f) for residual risk.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final rule is a ''significant regulatory action'' because it may raise novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements in the final rule are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. The records and reports required by the final rule are necessary for EPA to: (1) Identify major sources and new or reconstructed sources subject to the rule, (2) ensure that MACT is being properly applied, and (3) ensure that the emissions control devices are being properly operated and maintained on a continuous basis. Based on the reported information, EPA can decide which plants, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The annual average public reporting and recordkeeping burden for this collection of information over the first three years of the information collection request (ICR) is estimated to total 22,325 labor hours per year. This includes 10 responses per year from 98 respondents for an average of 22.7 hours per response. The total annualized cost burden to the facility is estimated at $1,626,649, including labor, capital, and operation and maintenance. The capital cost of monitoring equipment is estimated at $293,700; the estimated annual cost for operation and maintenance of monitoring equipment is $133,300.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology

and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 number for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9. When the ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of the final rule on small entities, small entity is defined as: (1) a small business according to the U.S. Small Business Administration size standards for NAICS codes 331511 (Iron Foundries), 331512 (Steel Investment Foundries), and 331513 (Steel Foundries, except Investment) of 500 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Based on SBA size definitions for the affected industries and reported sales and employment data, we identified 20 of the 63 companies incurring compliance costs as small businesses. These small businesses are expected to incur $3.3 million in compliance costs, or 15 percent of the total industry compliance costs of $21.2 million. The mean annual compliance cost as a share of sales for small businesses is estimated at 0.40 percent, and the median is 0.26 percent, with a range of 0.04 to 1.04 percent. We estimate that one small business may experience an impact between 1 and 3 percent of sales, but no small business is expected to experience an impact greater than 3 percent of sales. No significant impacts on their viability to continue operations and remain profitable is expected.

Although the final rule will not have a significant economic impact on a substantial number of small entities, we have nonetheless worked to minimize the impact of the final rule on small entities, consistent with our obligations under the CAA. We have discussed potential impacts and opportunities for emissions reductions with company representatives, and company representatives have also attended meetings held with industry trade associations to discuss the final rule. By changing the proposed requirements for capture systems and revising our initial MACT floor determinations, we have minimized the final rule impacts on small entities to the maximum extent allowable under the CAA.

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 effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the 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.

Today's final rule contains no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final rule does not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, today's final rule is not subject to sections 202 and 205 of the UMRA. The EPA has also determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to

ensure "meaningful and timely input in the development of regulatory policies on matters that have tribal implications.''

The final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own or operate facilities subject to the NESHAP. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on control technology and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a "significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the final rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The final rule involves technical standards. The final rule uses EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 12, and 18, 25, or 25A in 40 CFR part 60, appendix A. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5D, and 12. The search and review results have been documented and are placed in the docket for the final rule.

The search for emissions measurement procedures identified 17 voluntary consensus standards applicable to the final rule. Three of the 17 voluntary consensus standards were not available at the time of promulgation and EPA determined that 14 of these 17 standards were impractical alternatives to EPA test methods. Therefore, EPA is not adopting these standards in the final rule. The reasons for this determination are in docket for the final rule.

The following three of the 17 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A. While we are not including these standards in today's rule, the EPA will consider the standards when they are finalized.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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 has submitted a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the final rule in today's **Federal Register**. The final rule is not a "major rule'' as defined by 5 U.S.C. 804(2).

VI. Statutory Authority

The statutory authority for this action is provided by sections 112, 114, 116, and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*) This rulemaking is subject to the provisions of section 307(d) of the CAA.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 29, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Part 63 is amended by adding subpart EEEEE to read as follows:

Subpart EEEEE—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

Sec.

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What this Subpart Covers

§ 63.7680 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emissions limitations, work practice standards, and operation and maintenance requirements in this subpart.

§ 63.7681 Am I subject to this subpart?

You are subject to this subpart if you own or operate an iron and steel foundry that is (or is part of) a major source of hazardous air pollutant (HAP) emissions. Your iron and steel foundry is a major source of HAP for purposes of this subpart if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year or if it is located at a facility that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.7682 What parts of my foundry does this subpart cover?

(a) The affected source is each new or existing iron and steel foundry.

(b) This subpart covers emissions from metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines. This subpart also covers fugitive emissions from foundry operations.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source before December 23, 2002.

(d) An affected source is new if you commenced construction or reconstruction of the affected source on or after December 23, 2002. An affected source is reconstructed if it meets the definition of ''reconstruction'' in § 63.2.

§ 63.7683 When do I have to comply with this subpart?

(a) Except as specified in paragraph (b) of this section, if you have an existing affected source, you must comply with each emissions limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than April 23, 2007. Major source status for existing affected sources must be determined no later than April 23, 2007.

(b) If you have an existing affected source, you must comply with the work practice standards in § 63.7700(b) or (c), as applicable, no later than April 22, 2005.

(c) If you have a new affected source for which the initial startup date is on or before April 22, 2004, you must comply with each emissions limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by April 22, 2004.

(d) If you have a new affected source for which the initial startup date is after April 22, 2004, you must comply with each emissions limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(e) If your iron and steel foundry is an area source that becomes a major source of HAP, you must meet the requirements of § 63.6(c)(5).

(f) You must meet the notification and schedule requirements in § 63.7750. Note that several of these notifications must be submitted before the compliance date for your affected source.

Emissions Limitations

§ 63.7690 What emissions limitations must I meet?

(a) You must meet each emissions limit or standard in paragraphs (a)(1) through (11) of this section that applies to you.

(1) For each electric arc metal melting furnace, electric induction metal melting furnace, or scrap preheater at an existing iron and steel foundry, you must not discharge emissions through a conveyance to the atmosphere that exceed either the limit for particulate matter (PM) in paragraph (a)(1)(i) of this section or, alternatively the limit for total metal HAP in paragraph (a)(1)(ii) of this section:

(i) 0.005 grains of PM per dry standard cubic foot (gr/dscf), or

(ii) 0.0004 gr/dscf of total metal HAP.

(2) For each cupola metal melting furnace at an existing iron and steel foundry, you must not discharge emissions through a conveyance to the atmosphere that exceed either the limit for PM in paragraph (a)(2)(i) of this section or, alternatively the limit for total metal HAP in paragraph (a)(2)(ii) of this section:

(i) 0.006 gr/dscf of PM, or

(ii) 0.0005 gr/dscf of total metal HAP.

(3) For each cupola metal melting furnace or electric arc metal melting

furnace at a new iron and steel foundry, you must not discharge emissions through a conveyance to the atmosphere that exceed either the limit for PM in paragraph (a)(3)(i) of this section or, alternatively the limit for total metal HAP in paragraph (a)(3)(ii) of this section:

(i) 0.002 gr/dscf of PM, or

(ii) 0.0002 gr/dscf of total metal HAP.

(4) For each electric induction metal melting furnace or scrap preheater at a new iron and steel foundry, you must not discharge emissions through a conveyance to the atmosphere that exceed either the limit for PM in paragraph (a)(4)(i) of this section or, alternatively the limit for total metal HAP in paragraph (a)(4)(ii) of this section:

(i) 0.001 gr/dscf of PM, or

(ii) 0.00008 gr/dscf of total metal HAP.

(5) For each pouring station at an existing iron and steel foundry, you must not discharge emissions through a conveyance to the atmosphere that exceed either the limit for PM in paragraph (a)(5)(i) of this section or, alternatively the limit for total metal HAP in paragraph (a)(5)(ii) of this section:

(i) 0.010 gr/dscf of PM, or

(ii) 0.0008 gr/dscf of total metal HAP.

(6) For each pouring area or pouring station at a new iron and steel foundry, you must not discharge emissions through a conveyance to the atmosphere that exceed either the limit for PM in paragraph (a)(6)(i) of this section or, alternatively the limit for total metal HAP in paragraph (a)(6)(ii) of this section:

(i) 0.002 gr/dscf of PM, or

(ii) 0.0002 gr/dscf of total metal HAP.

(7) For each building or structure housing any emissions source at the iron and steel foundry, you must not discharge any fugitive emissions to the atmosphere that exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute average per hour that does not exceed 27 percent opacity.

(8) For each cupola metal melting furnace at a new or existing iron and steel foundry, you must not discharge emissions of volatile organic hazardous air pollutants (VOHAP) through a conveyance to the atmosphere that exceed 20 parts per million by volume (ppmv) corrected to 10 percent oxygen.

(9) As an alternative to the work practice standard in § 63.7700(e) for a scrap preheater at an existing iron and steel foundry or in § 63.7700(f) for a scrap preheater at a new iron and steel foundry, you must not discharge emissions of VOHAP through a conveyance to the atmosphere that exceed 20 ppmv.

(10) For one or more automated conveyor and pallet cooling lines that use a sand mold system or automated shakeout lines that use a sand mold system at a new iron and steel foundry, you must not discharge emissions of VOHAP through a conveyance to the atmosphere that exceed a flow-weighted average of 20 ppmv.

(11) For each triethylamine (TEA) cold box mold or core making line at a new or existing iron and steel foundry, you must meet either the emissions limit in paragraph (a)(11)(i) of this section or, alternatively the emissions standard in paragraph (a)(11)(ii) of this section:

(i) You must not discharge emissions of TEA through a conveyance to the atmosphere that exceed 1 ppmv, as determined when scrubbing with fresh acid solution; or

(ii) You must reduce emissions of TEA from each TEA cold box mold or core making line by at least 99 percent, as determined when scrubbing with fresh acid solution.

(b) You must meet each operating limit in paragraphs (b)(1) through (5) of this section that applies to you.

(1) You must install, operate, and maintain a capture and collection system for all emissions sources subject to an emissions limit or standard for VOHAP or TEA in paragraphs (a)(8) through (11) of this section.

(i) Each capture and collection system must meet accepted engineering standards, such as those published by the American Conference of Governmental Industrial Hygienists.

(ii) You must operate each capture system at or above the lowest value or settings established as operating limits in your operation and maintenance plan.

(2) You must operate each wet scrubber applied to emissions from a metal melting furnace, scrap preheater, pouring area, or pouring station subject to an emissions limit for PM or total metal HAP in paragraphs (a)(1) through (6) of this section such that the 3-hour average pressure drop and scrubber water flow rate does not fall below the minimum levels established during the initial or subsequent performance test.

(3) You must operate each combustion device applied to emissions from a cupola metal melting furnace subject to the emissions limit for VOHAP in paragraph (a)(8) of this section, such that the 15-minute average combustion zone temperature does not fall below 1,300 degrees Fahrenheit (°F). Periods when the cupola is off blast and for 15 minutes after going on blast from an off blast condition are not included in the 15-minute average.

(4) You must operate each combustion device applied to emissions from a scrap preheater subject to the emissions limit for VOHAP in paragraph (a)(9) of this section or from a TEA cold box mold or core making line subject to the emissions limit for TEA in paragraph (a)(11) of this section, such that the 3-hour average combustion zone temperature does not fall below the minimum level established during the initial or subsequent performance test.

(5) You must operate each wet acid scrubber applied to emissions from a TEA cold box mold or core making line subject to the emissions limit for TEA in paragraph (a)(11) of this section such that:

(i) The 3-hour average scrubbing liquid flow rate does not fall below the minimum level established during the initial or subsequent performance test; and

(ii) The 3-hour average pH of the scrubber blowdown, as measured by a continuous parameter monitoring system (CPMS), does not exceed 4.5 or the pH of the scrubber blowdown, as measured once every 8 hours during process operations, does not exceed 4.5.

(c) If you use a control device other than a baghouse, wet scrubber, wet acid scrubber, or combustion device, you must prepare and submit a monitoring plan containing the information listed in paragraphs (c)(1) through (5) of this section. The monitoring plan is subject to approval by the Administrator.

(1) A description of the device;

(2) Test results collected in accordance with § 63.7732 verifying the performance of the device for reducing emissions of PM, total metal HAP, VOHAP, or TEA to the levels required by this subpart;

(3) A copy of the operation and maintenance plan required by § 63.7710(b);

(4) A list of appropriate operating parameters that will be monitored to maintain continuous compliance with the applicable emissions limitation(s); and

(5) Operating parameter limits based on monitoring data collected during the performance test.

Work Practice Standards

§ 63.7700 What work practice standards must I meet?

(a) You must comply with the certification requirements in paragraph (b) of this section or prepare and implement a plan for the selection and inspection of scrap according to the requirements in paragraph (c) of this section.

(b) You must prepare and operate at all times according to a written certification that the foundry purchases and uses only certified-metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, oil filters, oily turnings, lead components, mercury switches, plastics, or organic liquids.

(c) You must prepare and operate at all times according to a written plan for the selection and inspection of iron and steel scrap to minimize, to the extent practicable, the amount of organics and HAP metals in the charge materials used by the iron and steel foundry. This scrap selection and inspection plan is subject to approval by the Administrator. You must keep a copy of the plan onsite and readily available to all plant personnel with materials acquisition or inspection duties. You must provide a copy of the material specifications to each of your scrap vendors. Each plan must include the information specified in paragraphs (c)(1) through (3) of this section.

(1) A materials acquisition program to limit organic contaminants according to the requirements in paragraph (c)(1)(i) or (ii) of this section.

(i) For scrap charged to a scrap preheater, electric arc metal melting furnace, or electric induction metal melting furnaces, specifications for scrap materials to be depleted (to the extent practicable) of the presence of used oil filters, plastic parts, organic liquids, and a program to ensure the scrap materials are drained of free liquids; or

(ii) For scrap charged to a cupola metal melting furnace, specifications for scrap materials to be depleted (to the extent practicable) of the presence of plastic, and a program to ensure the scrap materials are drained of free liquids.

(2) A materials acquisition program specifying that the scrap supplier remove accessible mercury switches from the trunks and hoods of any automotive bodies contained in the scrap and remove accessible lead components such as batteries and wheel weights. You must obtain and maintain onsite a copy of the procedures used by the scrap supplier for either removing accessible mercury switches or for purchasing automobile bodies that have had mercury switches removed, as applicable.

(3) Procedures for visual inspection of a representative portion, but not less than 10 percent, of all incoming scrap shipments to ensure the materials meet the specifications.

(i) The inspection procedures must identify the location(s) where inspections are to be performed for each type of shipment. The selected location(s) must provide a reasonable vantage point, considering worker safety, for visual inspection.

(ii) The inspection procedures must include recordkeeping requirements that document each visual inspection and the results.

(iii) The inspection procedures must include provisions for rejecting or returning entire or partial scrap shipments that do not meet specifications and limiting purchases from vendors whose shipments fail to meet specifications for more than three inspections in one calender year.

(d) For each furan warm box mold or core making line in a new or existing iron and steel foundry, you must use a binder chemical formulation that does not contain methanol as a specific ingredient of the catalyst formulation as determined by the Material Safety Data Sheet. This requirement does not apply to the resin portion of the binder system.

(e) For each scrap preheater at an existing iron and steel foundry, you must meet either the requirement in paragraph (e)(1) or (2) of this section. As an alternative to the requirement in paragraph (e)(1) or (2) of this section, you must meet the VOHAP emissions limit in § 63.7690(a)(9).

(1) You must install, operate, and maintain a gas-fired preheater where the flame directly contacts the scrap charged; or

(2) You must charge only material that is subject to and in compliance with the scrap certification requirement in paragraph (b) of this section.

(f) For each scrap preheater at a new iron and steel foundry, you must charge only material that is subject to and in compliance with the scrap certification requirement in paragraph (b) of this section. As an alternative to this requirement, you must meet the VOHAP emissions limit in § 63.7690(a)(9).

Operation and Maintenance Requirements

§ 63.7710 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your iron and steel foundry, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each capture and collection system and control device for an emissions source subject to an emissions limit in § 63.7690(a). Your operation and maintenance plan also must include procedures for igniting gases from mold vents in pouring areas and pouring stations that use a sand mold system. This operation and maintenance plan is subject to approval by the Administrator. Each plan must contain the elements described in paragraphs (b)(1) through (6) of this section.

(1) Monthly inspections of the equipment that is important to the performance of the total capture system (*i.e.*, pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (*e.g.*, presence of holes in the ductwork or hoods, flow constrictions caused by dents or accumulated dust in the ductwork, and fan erosion). The operation and maintenance plan must also include requirements to repair the defect or deficiency as soon as practicable.

(2) Operating limits for each capture system for an emissions source subject to an emissions limit or standard for VOHAP or TEA in § 63.7690(a)(8) through (11). You must establish the operating according to the requirements in paragraphs (b)(2)(i) through (iii) of this section.

(i) Select operating limit parameters appropriate for the capture system design that are representative and reliable indicators of the performance of the capture system. At a minimum, you must use appropriate operating limit parameters that indicate the level of the ventilation draft and damper position settings for the capture system when operating to collect emissions, including revised settings for seasonal variations. Appropriate operating limit parameters for ventilation draft include, but are not limited to: volumetric flow rate through each separately ducted hood, total volumetric flow rate at the inlet to the control device to which the capture system is vented, fan motor amperage, or static pressure. Any parameter for damper position setting may be used that indicates the duct damper position related to the fully open setting.

(ii) For each operating limit parameter selected in paragraph (b)(2)(i) of this section, designate the value or setting for the parameter at which the capture system operates during the process operation. If your operation allows for more than one process to be operating simultaneously, designate the value or setting for the parameter at which the capture system operates during each possible configuration that you may operate (*i.e.*, the operating limits with

one furnace melting, two melting, as applicable to your plant).

(iii) Include documentation in your plan to support your selection of the operating limits established for your capture system. This documentation must include a description of the capture system design, a description of the capture system operating during production, a description of each selected operating limit parameter, a rationale for why you chose the parameter, a description of the method used to monitor the parameter according to the requirements of § 63.7740(a), and the data used to set the value or setting for the parameter for each of your process configurations.

(3) Preventative maintenance plan for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(4) A site-specific monitoring plan for each bag leak detection system. For each bag leak detection system that operates on the triboelectric effect, the monitoring plan must be consistent with the recommendations contained in the U.S. Environmental Protection Agency guidance document "Fabric Filter Bag Leak Detection Guidance'' (EPA–454/R–98–015). This baghouse monitoring plan is subject to approval by the Administrator. The owner or operator shall operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. The plan must address all of the items identified in paragraphs (b)(4)(i) through (v) of this section.

(i) Installation of the bag leak detection system.

(ii) Initial and periodic adjustment of the bag leak detection system including how the alarm set-point will be established.

(iii) Operation of the bag leak detection system including quality assurance procedures.

(iv) How the bag leak detection system will be maintained including a routine maintenance schedule and spare parts inventory list.

(v) How the bag leak detection system output will be recorded and stored.

(5) Corrective action plan for each baghouse. The plan must include the requirement that, in the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Corrective actions taken may include, but are not limited to:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system.

(vi) Making process changes.

(vii) Shutting down the process producing the PM emissions.

(6) Procedures for providing an ignition source to mold vents of sand mold systems in each pouring area and pouring station unless you determine the mold vent gases either are not ignitable, ignite automatically, or cannot be ignited due to accessibility or safety issues. You must document and maintain records of this determination. The determination of ignitability, accessibility, and safety may encompass multiple casting patterns provided the castings utilize similar sand-to-metal ratios, binder formulations, and coating materials. The determination of ignitability must be based on observations of the mold vents within 5 minutes of pouring, and the flame must be present for at least 15 seconds for the mold vent to be considered ignited. For the purpose of this determination:

(i) Mold vents that ignite more than 75 percent of the time without the presence of an auxiliary ignition source are considered to ignite automatically; and

(ii) Mold vents that do not ignite automatically and cannot be ignited in the presence of an auxiliary ignition source more than 25 percent of the time are considered to be not ignitable.

General Compliance Requirements

§ 63.7720 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emissions limitations, work practice standards, and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, or malfunction.

(b) During the period between the compliance date specified for your iron and steel foundry in § 63.7683 and the date when applicable operating limits have been established during the initial performance test, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The startup, shutdown, and malfunction plan also must specify what constitutes a shutdown of a cupola and how to determine that operating conditions are normal following startup of a cupola.

Initial Compliance Requirements

§ 63.7730 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required by § 63.7(a)(2), you must conduct a performance test no later than 180 calendar days after the compliance date that is specified in § 63.7683 for your iron and steel foundry to demonstrate initial compliance with each emissions limitation in § 63.7690 that applies to you.

(b) For each work practice standard in § 63.7700 and each operation and maintenance requirement in § 63.7710 that applies to you where initial compliance is not demonstrated using a performance test, you must demonstrate initial compliance no later than 30 calendar days after the compliance date that is specified for your iron and steel foundry in § 63.7683.

(c) If you commenced construction or reconstruction between December 23, 2002 and April 22, 2004, you must demonstrate initial compliance with either the proposed emissions limit or the promulgated emissions limit no later than October 19, 2004 or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between December 23, 2002 and April 22, 2004, and you chose to comply with the proposed emissions limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emissions limit by October 19, 2007 or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.7731 When must I conduct subsequent performance tests?

(a) You must conduct subsequent performance tests to demonstrate compliance with all applicable PM or total metal HAP, VOHAP, and TEA emissions limitations in § 63.7690 for your iron and steel foundry no less frequently than every 5 years. The requirement to conduct performance tests every 5 years does not apply to an emissions source for which a

continuous emissions monitoring system (CEMS) is used to demonstrate continuous compliance.

(b) You must conduct subsequent performance tests to demonstrate compliance with the opacity limit in § 63.7690(a)(7) for your iron and steel foundry no less frequently than once every 6 months.

§ 63.7732 What test methods and other procedures must I use to demonstrate initial compliance with the emissions limitations?

(a) You must conduct each performance test that applies to your iron and steel foundry according to the requirements in § 63.7(e)(1) and the conditions specified in paragraphs (b) through (h) of this section.

(b) To determine compliance with the applicable emissions limit for PM in § 63.7690(a)(1) through (6) for a metal melting furnace, scrap preheater, pouring station, or pouring area, follow the test methods and procedures in paragraphs (b)(1) through (5) of this section.

(1) Determine the concentration of PM according to the test methods in 40 CFR part 60, appendix A that are specified in paragraphs (b)(1)(i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5B, 5D, 5F, or 5I, as applicable, to determine the PM concentration. The PM concentration is determined using only the front-half (probe rinse and filter) of the PM catch.

(2) Collect a minimum sample volume of 60 dscf of gas during each PM sampling run. A minimum of three valid test runs are needed to comprise a performance test.

(3) For cupola metal melting furnaces, sample only during times when the cupola is on blast.

(4) For electric arc and electric induction metal melting furnaces, sample only when metal is being melted.

(5) For scrap preheaters, sample only when scrap is being preheated.

(c) To determine compliance with the applicable emissions limit for total metal HAP in § 63.7690(a)(1) through (6) for a metal melting furnace, scrap preheater, pouring station, or pouring area, follow the test methods and procedures in paragraphs (c)(1) through (5) of this section.

(1) Determine the concentration of total metal HAP according to the test methods in 40 CFR part 60, appendix A that are specified in paragraphs (c)(1)(i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 29 to determine the total metal HAP concentration.

(2) Collect a minimum sample volume of 60 dscf of gas during each total metal HAP sampling run. A minimum of three valid test runs are needed to comprise a performance test.

(3) For cupola metal melting furnaces, sample only during times when the cupola is on blast.

(4) For electric arc and electric induction metal melting furnaces, sample only when metal is being melted.

(5) For scrap preheaters, sample only when scrap is being preheated.

(d) To determine compliance with the opacity limit in § 63.7690(a)(7) for fugitive emissions from buildings or structures housing any emissions source at the iron and steel foundry, follow the procedures in paragraphs (d)(1) and (2) of this section.

(1) Using a certified observer, conduct each opacity test according to the requirements in EPA Method 9 (40 CFR part 60, appendix A) and § 63.6(h)(5).

(2) Conduct each test such that the opacity observations overlap with the PM performance tests.

(e) To determine compliance with the applicable VOHAP emissions limit in § 63.7690(a)(8) for a cupola metal melting furnace or in § 63.7690(a)(9) for a scrap preheater, follow the test methods and procedures in paragraphs (e)(1) through (4) of this section.

(1) Determine the VOHAP concentration for each test run according to the test methods in 40 CFR part 60, appendix A that are specified in paragraphs (b)(1)(i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 18 to determine the VOHAP concentration. Alternatively, you may use Method 25 to determine the concentration of total gaseous nonmethane organics (TGNMO) or Method 25A to determine the concentration of total organic compounds (TOC), using hexane as the calibration gas.

(2) Determine the average VOHAP, TGNMO, or TOC concentration using a minimum of three valid test runs. Each test run must include a minimum of 60 continuous operating minutes.

(3) For a cupola metal melting furnace, correct the measured concentration of VOHAP, TGNMO, or TOC for oxygen content in the gas stream using Equation 1 of this section:

$$C_{VOHAP,\ 10\%O_2} = C_{VOHAP}\left(\frac{10.9\%}{20.9\% - \%O_2}\right) \qquad \text{(Eq. 1)}$$

Where:

C_{VOHAP} = Concentration of VOHAP in ppmv as measured by Method 18 in 40 CFR part 60, appendix A or the concentration of TGNMO or TOC in ppmv as hexane as measured by Method 25 or 25A in 40 CFR part 60, appendix A; and

$\%O_2$ = Oxygen concentration in gas stream, percent by volume (dry basis).

(4) For a cupola metal melting furnace, measure the combustion zone temperature of the combustion device with the CPMS required in § 63.7740(d) during each sampling run in 15-minute intervals. Determine and record the 15-minute average of the three runs.

(f) Follow the applicable procedures in paragraphs (f)(1) through (3) of this section to determine compliance with the VOHAP emissions limit in § 63.7690(a)(10) for automated pallet cooling lines or automated shakeout lines.

(1) Follow these procedures to demonstrate compliance by direct measurement of total hydrocarbons (a surrogate for VOHAP) using a volatile organic compound (VOC) CEMS.

(i) Using the VOC CEMS required in § 63.7740(g), measure and record the concentration of total hydrocarbons (as hexane) for 180 continuous operating minutes. You must measure emissions at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Reduce the monitoring data to hourly averages as specified in § 63.8(g)(2).

(iii) Compute and record the 3-hour average of the monitoring data.

(2) As an alternative to the procedures in paragraph (f)(1) of this section, you may demonstrate compliance with the VOHAP emissions limit in § 63.7690(a)(10) by establishing a site-specific TOC emissions limit that is correlated to the VOHAP emissions limit according to the procedures in paragraph (f)(2)(i) through (ix) of this section.

(i) Determine the VOHAP concentration for each test run according to the test methods in 40 CFR part 60, appendix A that are specified in paragraph (f)(2)(ii) through (vi) of this section.

(ii) Method 1 or 1A to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(iii) Method 2, 2A, 2C, 2D, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iv) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(v) Method 4 to determine the moisture content of the stack gas.

(vi) Method 18 to determine the VOHAP concentration. Alternatively, you may use Method 25 to determine the concentration of TGNMO using hexane as the calibration gas.

(vii) Using the CEMS required in § 63.7740(g), measure and record the concentration of total hydrocarbons (as hexane) during each of the Method 18 (or Method 25) sampling runs. You must measure emissions at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(viii) Calculate the average VOHAP (or TGNMO) concentration for the source test as the arithmetic average of the concentrations measured for the individual test runs, and determine the average concentration of total hydrocarbon (as hexane) as measured by the CEMS during all test runs.

(ix) Calculate the site-specific VOC emissions limit using Equation 2 of this section:

$$VOC_{limit} = 20 \times \frac{C_{VOHAP,\,avg}}{C_{CEM}} \qquad \text{(Eq. 2)}$$

Where:

$C_{VOHAP,avg}$ = Average concentration of VOHAP for the source test in ppmv as measured by Method 18 in 40 CFR part 60, appendix A or the average concentration of TGNMO for the source test in ppmv as hexane as measured by Method 25 in 40 CFR part 60, appendix A; and

C_{CEM} = Average concentration of total hydrocarbons in ppmv as hexane as measured using the CEMS during the source test.

(3) For two or more exhaust streams from one or more automated conveyor and pallet cooling lines or automated shakeout lines, compute the flow-weighted average concentration of VOHAP emissions for each combination of exhaust streams using Equation 3 of this section:

$$C_W = \frac{\sum_{i=1}^{n} C_i\, Q_i}{\sum_{i=1}^{n} Q_i} \qquad \text{(Eq. 3)}$$

Where:

C_w = Flow-weighted concentration of VOHAP or VOC, ppmv (as hexane);

C_i = Concentration of VOHAP or VOC from exhaust stream ''i'', ppmv (as hexane);

n = Number of exhaust streams sampled; and

Q_i = Volumetric flow rate of effluent gas from exhaust stream ''i,'' in dry standard cubic feet per minute (dscfm).

(g) To determine compliance with the emissions limit or standard in § 63.7690(a)(11) for a TEA cold box mold or core making line, follow the test methods in 40 CFR part 60, appendix A, specified in paragraphs (g)(1) through (4) of this section.

(1) Determine the TEA concentration for each test run according to the test methods in 40 CFR part 60, appendix A that are specified in paragraphs (g)(1)(i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points in each stack or duct. If you elect to meet the 99 percent reduction standard, sampling sites must be located both at the inlet to the control device and at the outlet of the control device prior to any releases to the atmosphere. If you elect to meet the concentration limit, the sampling site must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 18 to determine the TEA concentration. The Method 18 sampling option and time must be sufficiently long such that either the TEA concentration in the field sample is at least 5 times the limit of detection for the analytical method or the test results calculated using the laboratory's reported analytical detection limit for the specific field samples are less than 1/5 of the applicable emissions limit. The adsorbent tube approach, as described in Method 18, may be required to achieve the necessary analytical detection limits. The sampling time must be at least 1 hour in all cases.

(2) Conduct the test as soon as practicable after adding fresh acid solution and the system has reached normal operating conditions.

(3) If you use a wet acid scrubber that is subject to the operating limit in § 63.7690(b)(5)(ii) for pH level, determine the pH of the scrubber blowdown using the procedures in paragraph (g)(3)(i) or (ii) of this section.

(i) Measure the pH of the scrubber blowdown with the CPMS required in § 63.7740(f)(2) during each TEA sampling run in intervals of no more than 15 minutes. Determine and record the 3-hour average; or

(ii) Measure and record the pH level using the probe and meter required in § 63.7740(f)(2) once each sampling run. Determine and record the average pH level for the three runs.

(4) If you are subject to the 99 percent reduction standard, calculate the mass emissions reduction using Equation 4 of this section:

$$\%\ \text{reduction} = \frac{E_i - E_o}{E_i} \times 100\% \qquad \text{(Eq. 4)}$$

Where:

E_i = Mass emissions rate of TEA at control device inlet, kg/hr; and

E_o = Mass emissions rate of TEA at control device outlet, kg/hr.

(h) To determine compliance with the PM or total metal HAP emissions limits in § 63.7690(a)(1) through (6) when one or more regulated emissions sources are combined with either another regulated emissions source subject to a different emissions limit or other non-regulated emissions sources, you may demonstrate compliance using one of the procedures in paragraphs (h)(1) through (3) of this section.

(1) Meet the most stringent applicable emissions limit for the regulated emissions sources included in the combined emissions stream for the combined emissions stream.

(2) Use the procedures in paragraphs (h)(2)(i) through (iii) of this section.

(i) Determine the volumetric flow rate of the individual regulated streams for which emissions limits apply.

(ii) Calculate the flow-weighted average emissions limit, considering only the regulated streams, using Equation 3 of this section, except C_w is the flow-weighted average emissions limit for PM or total metal HAP in the exhaust stream, gr/dscf; and C_i is the concentration of PM or total metal HAP in exhaust stream ''i'', gr/dscf.

(iii) Meet the calculated flow-weighted average emissions limit for the regulated emissions sources included in the combined emissions stream for the combined emissions stream.

(3) Use the procedures in paragraphs (h)(3)(i) through (iii) of this section.

(i) Determine the PM or total metal HAP concentration of each of the regulated streams prior to the combination with other exhaust streams or control device.

(ii) Measure the flow rate and PM or total metal HAP concentration of the combined exhaust stream both before and after the control device and calculate the mass removal efficiency of the control device using Equation 4 of this section, except E_i is the mass emissions rate of PM or total metal HAP at the control device inlet, lb/hr and E_o is the mass emissions rate of PM or total metal HAP at the control device outlet, lb/hr

(iii) Meet the applicable emissions limit based on the calculated PM or total metal HAP concentration for the regulated emissions source using Equation 5 of this section:

$$C_{released} = C_i \times \left(1 - \frac{\%\ \text{reduction}}{100}\right) \qquad \text{(Eq. 5)}$$

Where:

$C_{released}$ = Calculated concentration of PM (or total metal HAP) predicted to be released to the atmosphere from the regulated emissions source, in gr/dscf; and

C_i = Concentration of PM (or total metal HAP) in the uncontrolled regulated exhaust stream, in gr/dscf.

§ 63.7733 What procedures must I use to establish operating limits?

(a) For each capture system subject to operating limits in § 63.7690(b)(1)(ii), you must establish site-specific operating limits in your operation and maintenance plan according to the procedures in paragraphs (a)(1) through (3) of this section.

(1) Concurrent with applicable emissions and opacity tests, measure and record values for each of the operating limit parameters in your capture system operation and maintenance plan according to the monitoring requirements in § 63.7740(a).

(2) For any dampers that are manually set and remain at the same position at all times the capture system is operating, the damper position must be visually checked and recorded at the beginning and end of each run.

(3) Review and record the monitoring data. Identify and explain any times the capture system operated outside the applicable operating limits.

(b) For each wet scrubber subject to the operating limits in § 63.7690(b)(2) for pressure drop and scrubber water flow rate, you must establish site-specific operating limits according to the procedures specified in paragraphs (b)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7740(c), measure and record the pressure drop and scrubber water flow rate in intervals of no more than 15 minutes during each PM test run.

(2) Compute and record the 3-hour average pressure drop and average scrubber water flow rate for each sampling run in which the applicable emissions limit is met.

(c) For each combustion device applied to emissions from a scrap preheater or TEA cold box mold or core making line subject to the operating limit in § 63.7690(b)(4) for combustion zone temperature, you must establish a site-specific operating limit according to the procedures specified in paragraphs (c)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7740(e), measure and record the combustion zone temperature during each sampling run in intervals of no more than 15 minutes.

(2) Compute and record the 3-hour average combustion zone temperature for each sampling run in which the applicable emissions limit is met.

(d) For each acid wet scrubber subject to the operating limit in § 63.7690(b)(5), you must establish a site-specific operating limit for scrubbing liquid flow rate according to the procedures specified in paragraphs (d)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7740(f), measure and record the scrubbing liquid flow rate during each TEA sampling run in intervals of no more than 15 minutes.

(2) Compute and record the 3-hour average scrubbing liquid flow rate for each sampling run in which the applicable emissions limit is met.

(e) You may change the operating limits for a capture system, wet scrubber, acid wet scrubber, or combustion device if you meet the requirements in paragraphs (e)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emissions limitation in § 63.7690.

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) through (d) of this section.

(f) You may use a previous performance test (conducted since December 22, 2002) to establish an operating limit provided the test meets the requirements of this subpart.

§ 63.7734 How do I demonstrate initial compliance with the emissions limitations that apply to me?

(a) You have demonstrated initial compliance with the emissions limits in § 63.7690(a) if:

(1) For each electric arc metal melting furnace, electric induction metal melting furnace, or scrap preheater at an existing iron and steel foundry,

(i) The average PM concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(b), did not exceed 0.005 gr/dscf; or

(ii) The average total metal HAP concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(c), did not exceed 0.0004 gr/dscf.

(2) For each cupola metal melting furnace at an existing iron and steel foundry,

(i) The average PM concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(b), did not exceed 0.006 gr/dscf; or

(ii) The average total metal HAP concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(c), did not exceed 0.0005 gr/dscf.

(3) For each cupola metal melting furnace or electric arc metal melting furnace at a new iron and steel foundry,

(i) The average PM concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(b), did not exceed 0.002 gr/dscf; or

(ii) The average total metal HAP concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(c), did not exceed 0.0002 gr/dscf.

(4) For each electric induction metal melting furnace or scrap preheater at a new iron and steel foundry,

(i) The average PM concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(b), did not exceed 0.001 gr/dscf; or

(ii) The average total metal HAP concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(c), did not exceed 0.00008 gr/dscf.

(5) For each pouring station at an existing iron and steel foundry,

(i) The average PM concentration in the exhaust stream, measured according to the performance test procedures in § 63.7732(b), did not exceed 0.010 gr/dscf; or

(ii) The average total metal HAP concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(c), did not exceed 0.0008 gr/dscf.

(6) For each pouring area or pouring station at a new iron and steel foundry,

(i) The average PM concentration in the exhaust stream, measured according to the performance test procedures in § 63.7732(b), did not exceed 0.002 gr/dscf; or

(ii) The average total metal HAP concentration in the exhaust stream, determined according to the performance test procedures in § 63.7732(c), did not exceed 0.0002 gr/dscf.

(7) For each building or structure housing any emissions source at the iron and steel foundry, the opacity of fugitive emissions discharged to the atmosphere, determined according to the performance test procedures in § 63.7732(d), did not exceed 20 percent (6-minute average), except for one 6-minute average per hour that did not exceed 27 percent opacity.

(8) For each cupola metal melting furnace at a new or existing iron and steel foundry, the average VOHAP concentration, determined according to the performance test procedures in § 63.7732(e), did not exceed 20 ppmv corrected to 10 percent oxygen.

(9) For each scrap preheater at an existing iron and steel foundry that does not meet the work practice standards in § 63.7700(e)(1) or (2) and for each scrap preheater at a new iron and steel foundry that does not meet the work practice standard in § 63.7700(f), the average VOHAP concentration determined according to the performance test procedures in § 63.7732(e), did not exceed 20 ppmv.

(10) For one or more automated conveyor and pallet cooling lines that use a sand mold system or automated shakeout lines that use a sand mold system at a new foundry,

(i) You have reduced the data from the CEMS to 3-hour averages according to the performance test procedures in § 63.7732(f)(1) or (2); and

(ii) The 3-hour flow-weighted average VOHAP concentration, measured according to the performance test procedures in § 63.7332(f)(1) or (2), did not exceed 20 ppmv.

(11) For each TEA cold box mold or core making line in a new or existing iron and steel foundry, the average TEA concentration, determined according to the performance test procedures in § 63.7732(g) did not exceed 1 ppmv or was reduced by 99 percent.

(b) You have demonstrated initial compliance with the operating limits in § 63.7690(b) if:

(1) For each capture system subject to the operating limit in § 63.7690(b)(1)(ii),

(i) You have established appropriate site-specific operating limits in your operation and maintenance plan according to the requirements in § 63.7710(b); and

(ii) You have a record of the operating parameter data measured during the performance test in accordance with § 63.7733(a); and

(2) For each wet scrubber subject to the operating limits in § 63.7690(b)(2) for pressure drop and scrubber water flow rate, you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7733(b).

(3) For each combustion device subject to the operating limit in § 63.7690(b)(3) for combustion zone temperature, you have a record of the combustion zone temperature measured during the performance test in accordance with § 63.7732(e)(4).

(4) For each combustion device subject to the operating limit in § 63.7690(b)(4) for combustion zone temperature, you have established appropriate site-specific operating limits and have a record of the combustion zone temperature measured during the performance test in accordance with § 63.7733(c).

(5) For each acid wet scrubber subject to the operating limits in § 63.7690(b)(5) for scrubbing liquid flow rate and scrubber blowdown pH,

(i) You have established appropriate site-specific operating limits for the scrubbing liquid flow rate and have a record of the scrubbing liquid flow rate measured during the performance test in accordance with § 63.7733(d); and

(ii) You have a record of the pH of the scrubbing liquid blowdown measured during the performance test in accordance with § 63.7732(g)(3).

§ 63.7735 How do I demonstrate initial compliance with the work practice standards that apply to me?

(a) For each iron and steel foundry subject to the certification requirement in § 63.7700(b), you have demonstrated initial compliance if you have certified in your notification of compliance status

that: ''At all times, your foundry will purchase and use only certified metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, oil filters, oily turnings, lead components, mercury switches, plastics, or organic liquids.''

(b) For each iron and steel foundry subject to the requirements in § 63.7700(c) for a scrap inspection and selection plan, you have demonstrated initial compliance if you have certified in your notification of compliance status that:

(1) You have submitted a written plan to the Administrator for approval according to the requirements in § 63.7700(c); and

(2) You will operate at all times according to the plan requirements.

(c) For each furan warm box mold or core making line in a new or existing foundry subject to the work practice standard in § 63.7700(d), you have demonstrated initial compliance if you have certified in your notification of compliance status that:

(1) You will meet the no methanol requirement for the catalyst portion of each binder chemical formulation; and

(2) You have records documenting your certification of compliance, such as a material safety data sheet (provided that it contains appropriate information), a certified product data sheet, or a manufacturer's hazardous air pollutant data sheet, onsite and available for inspection.

(d) For each scrap preheater at an existing iron and steel foundry subject to the work practice standard in § 63.7700(e)(1) or (2), you have demonstrated initial compliance if you have certified in your notification of compliance status that:

(1) You have installed a gas-fired preheater where the flame directly contacts the scrap charged, you will operate and maintain each gas-fired scrap preheater such that the flame directly contacts the scrap charged, and you have records documenting your certification of compliance that are onsite and available for inspection; or

(2) You will charge only material that is subject to and in compliance with the scrap certification requirements in § 63.7700(b) and you have records documenting your certification of compliance that are onsite and available for inspection.

(e) For each scrap preheater at a new iron and steel foundry subject to the work practice standard in § 63.7700(f), you have demonstrated initial compliance if you have certified in your notification of compliance status that you will charge only material that is subject to and in compliance with the scrap certification requirements in § 63.7700(b) and you have records documenting your certification of compliance that are onsite and available for inspection.

§ 63.7736 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

(a) For each capture system subject to an operating limit in § 63.7690(b), you have demonstrated initial compliance if you have met the conditions in paragraphs (a)(1) and (2) of this section.

(1) You have certified in your notification of compliance status that:

(i) You have submitted the capture system operation and maintenance plan to the Administrator for approval according to the requirements of § 63.7710(b); and

(ii) You will inspect, operate, and maintain each capture system according to the procedures in the plan.

(2) You have certified in your performance test report that the system operated during the test at the operating limits established in your operation and maintenance plan.

(b) For each control device subject to an operating limit in § 63.7690(b), you have demonstrated initial compliance if you have certified in your notification of compliance status that:

(1) You have submitted the control device operation and maintenance plan to the Administrator for approval according to the requirements of § 63.7710(b); and

(2) You will inspect, operate, and maintain each control device according to the procedures in the plan.

(c) For each bag leak detection system, you have demonstrated initial compliance if you have certified in your notification of compliance status that:

(1) You have submitted the bag leak detection system monitoring plan to the Administrator for approval according to the requirements of § 63.7710(b);

(2) You will inspect, operate, and maintain each bag leak detection system according to the procedures in the plan; and

(3) You will follow the corrective action procedures for bag leak detection system alarms according to the requirements in the plan.

(d) For each pouring area and pouring station in a new or existing foundry, you have demonstrated initial compliance if you have certified in your notification of compliance status report that:

(1) You have submitted the mold vent ignition plan to the Administrator for approval according to the requirements in § 63.7710(b); and

(2) You will follow the procedures for igniting mold vent gases according to the requirements in the plan.

Continuous Compliance Requirements

§ 63.7740 What are my monitoring requirements?

(a) For each capture system subject to an operating limit in § 63.7690(b)(1), you must install, operate, and maintain a CPMS according to the requirements in § 63.7741(a) and the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you use a flow measurement device to monitor the operating limit parameter, you must at all times monitor the hourly average rate (*e.g.*, the hourly average actual volumetric flow rate through each separately ducted hood or the average hourly total volumetric flow rate at the inlet to the control device).

(2) Dampers that are manually set and remain in the same position are exempt from the requirement to install and operate a CPMS. If dampers are not manually set and remain in the same position, you must make a visual check at least once every 24 hours to verify that each damper for the capture system is in the same position as during the initial performance test.

(b) For each negative pressure baghouse or positive pressure baghouse equipped with a stack that is applied to meet any PM or total metal HAP emissions limitation in this subpart, you must at all times monitor the relative change in PM loadings using a bag leak detection system according to the requirements in § 63.7741(b) and conduct inspections at their specified frequencies according to the requirements specified in paragraphs (b)(1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply for pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or lying on their sides. You do not have to make this

check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(c) For each wet scrubber subject to the operating limits in § 63.7690(b)(2), you must at all times monitor the 3-hour average pressure drop and scrubber water flow rate using CPMS according to the requirements in § 63.7741(c).

(d) For each combustion device subject to the operating limit in § 63.7690(b)(3), you must at all times monitor the 15-minute average combustion zone temperature using a CPMS according to the requirements of § 63.7741(d).

(e) For each combustion device subject to the operating limit in § 63.7690(b)(4), you must at all times monitor the 3-hour average combustion zone temperature using CPMS according to the requirements in § 63.7741(d).

(f) For each wet acid scrubber subject to the operating limits in § 63.7690(b)(5),

(1) You must at all times monitor the 3-hour average scrubbing liquid flow rate using CPMS according to the requirements of § 63.7741(e)(1); and

(2) You must at all times monitor the 3-hour average pH of the scrubber blowdown using CPMS according to the requirements in § 63.7741(e)(2) or measure and record the pH of the scrubber blowdown once per production cycle using a pH probe and meter according to the requirements in § 63.7741(e)(3).

(g) For one or more automated conveyor and pallet cooling lines and automated shakeout lines at a new iron and steel foundry subject to the VOHAP emissions limit in § 63.7690(a)(10), you must at all times monitor the 3-hour average VOHAP concentration using a CEMS according to the requirements of § 63.7741(g).

§ 63.7741 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each capture system subject to an operating limit in § 63.7690(b)(1), you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a)(1) through (3) of this section.

(1) If you use a flow measurement device to monitor an operating limit parameter for a capture system, you must meet the requirements in paragraphs (a)(1)(i) through (iv) of this section.

(i) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) If you use a pressure measurement device to monitor the operating limit parameter for a capture system, you must meet the requirements in paragraphs (a)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(3) Record the results of each inspection, calibration, and validation check.

(b) You must install, operate, and maintain a bag leak detection system according to the requirements in paragraphs (b)(1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative particulate matter loadings and the owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (*e.g.*, using a strip chart recorder or a data logger).

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over the alarm set point established in the operation and maintenance plan, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(4) The initial adjustment of the system must, at minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time (if applicable).

(5) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set point, or alarm delay time without approval from the Administrator. Except, once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonable effects including temperature and humidity according to the procedures in the operation and maintenance plan required by § 63.7710(b).

(6) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector sensor must be installed downstream of the baghouse and upstream of any wet scrubber.

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) For each wet scrubber subject to the operating limits in § 63.7690(b)(2), you must install and maintain CPMS to measure and record the pressure drop and scrubber water flow rate according to the requirements in paragraphs (c)(1) and (2) of this section.

(1) For each CPMS for pressure drop you must:

(i) Locate the pressure sensor in or as close as possible to a position that provides a representative measurement of the pressure drop and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For each CPMS for scrubber liquid flow rate, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For each combustion device subject to the operating limit in § 63.7690(b)(3) or (4), you must install and maintain a CPMS to measure and record the combustion zone temperature according to the requirements in paragraphs (d)(1) through (8) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a noncryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2°C or 0.75 percent of the temperature value, whichever is larger.

(3) For a cryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2°C or 2 percent of the temperature value, whichever is larger.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If you use a chart recorder, it must have a sensitivity in the minor division of at least 20°F.

(6) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, conduct a temperature sensor validation check, in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7°C of the process temperature sensor's reading.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range, or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(e) For each wet acid scrubber subject to the operating limits in § 63.7690(b)(5), you must:

(1) Install and maintain CPMS to measure and record the scrubbing liquid flow rate according to the requirements in paragraph (c)(2) of this section; and

(2) Install and maintain CPMS to measure and record the pH of the scrubber blowdown according to the requirements in paragraph (e)(2)(i) through (iv) of this section.

(i) Locate the pH sensor in a position that provides a representative measurement of the pH and that minimizes or eliminates internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.1 pH or a transducer with a minimum measurement sensitivity of 5 percent of the pH range.

(iii) Check gauge calibration quarterly and transducer calibration monthly using a manual pH gauge.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(3) As an alternative to the CPMS required in paragraph (e)(2) of this section, you may use a pH probe to extract a sample for analysis by a pH meter that meets the requirements in paragraphs (e)(3)(i) through (iii) of this section.

(i) The pH meter must have a range of at least 1 to 5 or more;

(ii) The pH meter must have a accuracy of ±0.1; and

(iii) The pH meter must have a resolution of at least 0.1 pH.

(f) You must operate each CPMS used to meet the requirements of this subpart according to the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of three of the required four data points to constitute a valid hour of data.

(2) Each CPMS must have valid hourly data for 100 percent of every averaging period.

(3) Each CPMS must determine and record the hourly average of all recorded readings and the 3-hour average of all recorded readings.

(g) For each automated conveyor and pallet cooling line and automated shakeout line at a new iron and steel foundry subject to the VOHAP emissions limit in § 63.7690(a)(10), you must install, operate, and maintain a CEMS to measure and record the concentration of VOHAP emissions according to the requirements in paragraphs (g)(1) through (3) of this section.

(1) You must install, operate, and maintain each CEMS according to Performance Specification 8 in 40 CFR part 60, appendix B.

(2) You must conduct a performance evaluation of each CEMS according to the requirements of § 63.8 and Performance Specification 8 in 40 CFR part 60, appendix B.

(3) You must operate each CEMS according to the requirements specified in paragraph (g)(3)(i) through (iv) of this section.

(i) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(ii) You must reduce CEMS data as specified in § 63.8(g)(2).

(iii) Each CEMS must determine and record the 3-hour average emissions using all the hourly averages collected for periods during which the CEMS is not out-of-control.

(iv) Record the results of each inspection, calibration, and validation check.

§ 63.7742 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) any time a source of emissions is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emissions or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.7743 How do I demonstrate continuous compliance with the emissions limitations that apply to me?

(a) You must demonstrate continuous compliance by meeting the applicable conditions in paragraphs (a)(1) through (12) of this section:

(1) For each electric arc metal melting furnace, electric induction metal melting furnace, or scrap preheater at an existing iron and steel foundry,

(i) Maintaining the average PM concentration in the exhaust stream at or below 0.005 gr/dscf; or

(ii) Maintaining the average total metal HAP concentration in the exhaust stream at or below 0.0004 gr/dscf.

(2) For each cupola metal melting furnace at an existing iron and steel foundry,

(i) Maintaining the average PM concentration in the exhaust stream at or below 0.006 gr/dscf; or

(ii) Maintaining the average total metal HAP concentration in the exhaust stream at or below 0.0005 gr/dscf.

(3) For each cupola metal melting furnace or electric arc metal melting furnace at new iron and steel foundry,

(i) Maintaining the average PM concentration in the exhaust stream at or below 0.002 gr/dscf; or

(ii) Maintaining the average total metal HAP concentration in the exhaust stream at or below 0.0002 gr/dscf.

(4) For each electric induction metal melting furnace or scrap preheater at a new iron and steel foundry,

(i) Maintaining the average PM concentration in the exhaust stream at or below 0.001 gr/dscf; or

(ii) Maintaining the average total metal HAP concentration in the exhaust stream at or below 0.00008 gr/dscf.

(5) For each pouring station at an existing iron and steel foundry,

(i) Maintaining the average PM concentration in the exhaust stream at or below 0.010 gr/dscf; or

(ii) Maintaining the average total metal HAP concentration in the exhaust stream at or below 0.0008 gr/dscf.

(6) For each pouring area or pouring station at a new iron and steel foundry,

(i) Maintaining the average PM concentration in the exhaust stream at or below 0.002 gr/dscf; or

(ii) Maintaining the average total metal HAP concentration in the exhaust stream at or below 0.0002 gr/dscf.

(7) For each building or structure housing any emissions source at the iron and steel foundry, maintaining the opacity of any fugitive emissions discharged to the atmosphere at or below 20 percent opacity (6-minute average), except for one 6-minute average per hour that does not exceed 27 percent opacity.

(8) For each cupola metal melting furnace at a new or existing iron and steel foundry, maintaining the average VOHAP concentration in the exhaust stream at or below 20 ppmv corrected to 10 percent oxygen.

(9) For each scrap preheater at an existing new iron and steel foundry that does not comply with the work practice standard in § 63.7700(e)(1) or (2) and for each scrap preheater at a new iron and steel foundry that does not comply with the work practice standard in § 63.7700(f), maintaining the average VOHAP concentration in the exhaust stream at or below 20 ppmv.

(10) For one or more automated conveyor and pallet cooling lines or automated shakeout lines that use a sand mold system at a new iron and steel foundry,

(i) Maintaining the 3-hour flow-weighted average VOHAP concentration in the exhaust stream at or below 20 ppmv;

(ii) Inspecting and maintaining each CEMS according to the requirements of § 63.7741(g) and recording all information needed to document conformance with these requirements; and

(iii) Collecting and reducing monitoring data for according to the requirements of § 63.7741(g) and recording all information needed to document conformance with these requirements.

(11) For each TEA cold box mold or core making line at a new or existing iron and steel foundry, maintaining a 99 percent reduction in the VOHAP concentration in the exhaust stream or maintaining the average VOHAP concentration in the exhaust stream at or below 1 ppmv.

(12) Conducting subsequent performance tests at least every 5 years for each emissions source subject to an emissions limit for PM, total metal HAP, VOHAP, or TEA in § 63.7690(a) and subsequent performance tests at least every 6 months for each building or structure subject to the opacity limit in § 63.7690(a)(7).

(b) You must demonstrate continuous compliance for each capture system subject to an operating limit in § 63.7690(b)(1) by meeting the requirements in paragraphs (b)(1) and (2) of this section.

(1) Operating the capture system at or above the lowest values or settings established for the operating limits in your operation and maintenance plan; and

(2) Monitoring the capture system according to the requirements in § 63.7740(a) and collecting, reducing, and recording the monitoring data for each of the operating limit parameters according to the applicable requirements in this subpart.

(c) For each baghouse equipped with a bag leak detection system,

(1) Maintaining records of the times the bag leak detection system alarm sounded, and for each valid alarm, the time you initiated corrective action, the corrective action taken, and the date on which corrective action was completed; and

(2) Inspecting and maintaining each baghouse according to the requirements of § 63.7740(b)(1) through (8) and recording all information needed to document conformance with these requirements.

(d) For each wet scrubber that is subject to the operating limits in § 63.7690(b)(2), you must demonstrate continuous compliance by:

(1) Maintaining the 3-hour average pressure drop and 3-hour average scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test;

(2) Inspecting and maintaining each CPMS according to the requirements of § 63.7741(c) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to the requirements of § 63.7741(f) and recording all information needed to document conformance with these requirements.

(e) For each combustion device that is subject to the operating limit in § 63.7690(b)(3), you must demonstrate continuous compliance by:

(1) Maintaining the 15-minute average combustion zone temperature at a level no lower than 1,300°F;

(2) Inspecting and maintaining each CPMS according to the requirements of § 63.7741(d) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for combustion zone temperature according to the requirements of § 63.7741(f) and recording all information needed to document conformance with these requirements.

(f) For each combustion device that is subject to the operating limit in § 63.7690(b)(4), you must demonstrate continuous compliance by:

(1) Maintaining the 3-hour average combustion zone temperature at a level no lower that established during the initial or subsequent performance test;

(2) Inspecting and maintaining each CPMS according to the requirements of § 63.7741(d) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for combustion zone temperature according to the

requirements of § 63.7741(f) and recording all information needed to document conformance with these requirements.

(g) For each acid wet scrubber subject to the operating limits in § 63.7690(b)(5), you must demonstrate continuous compliance by:

(1) Maintaining the 3-hour average scrubbing liquid flow rate at a level no lower than the level established during the initial or subsequent performance test;

(2) Maintaining the 3-hour average pH of the scrubber blowdown at a level no higher than 4.5 (if measured by a CPMS) or maintaining the pH level of the scrubber blowdown during each production shift no higher than 4.5;

(3) Inspecting and maintaining each CPMS according to the requirements of § 63.7741(e) and recording all information needed to document conformance with these requirements; and

(4) Collecting and reducing monitoring data for scrubbing liquid flow rate and scrubber blowdown pH according to the requirements of § 63.7741(f) and recording all information needed to document conformance with these requirements. If the pH level of the scrubber blowdown is measured by a probe and meter, you must demonstrate continuous compliance by maintaining records that document the date, time, and results of each sample taken for each production shift.

§ 63.7744 How do I demonstrate continuous compliance with the work practice standards that apply to me?

(a) You must maintain records that document continuous compliance with the certification requirements in § 63.7700(b) or with the procedures in your scrap selection and inspection plan required in § 63.7700(c). Your records documenting compliance with the scrap selection and inspection plan must include a copy (kept onsite) of the procedures used by the scrap supplier for either removing accessible mercury switches or for purchasing automobile bodies that have had mercury switches removed, as applicable.

(b) You must keep records of the chemical composition of all catalyst binder formulations applied in each furan warm box mold or core making line at a new or existing iron and steel foundry to demonstrate continuous compliance with the requirements in § 63.7700(d).

(c) For a scrap preheater at an existing iron and steel foundry, you must operate and maintain each gas-fired preheater such that the flame directly contacts the scrap charged to demonstrate continuous compliance with the requirement § 63.7700(e)(1). If you choose to meet the work practice standard in § 63.7700(e)(2), you must keep records to document that the scrap preheater charges only material that is subject to and in compliance with the scrap certification requirements in § 63.7700(b).

(d) For a scrap preheater at a new iron and steel foundry, you must keep records to document that each scrap preheater charges only material that is subject to and in compliance with the scrap certification requirements in § 63.7700(b) to demonstrate continuous compliance with the requirement in § 63.7700(f).

§ 63.7745 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each capture system and control device for an emissions source subject to an emissions limit in § 63.7690(a), you must demonstrate continuous compliance with the operation and maintenance requirements of § 63.7710 by:

(1) Making monthly inspections of capture systems and initiating corrective action according to § 63.7710(b)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance for each control device according to the preventive maintenance plan required by § 63.7710(b)(3) and recording all information needed to document conformance with these requirements;

(3) Operating and maintaining each bag leak detection system according to the site-specific monitoring plan required by § 63.7710(b)(4) and recording all information needed to demonstrate conformance with these requirements;

(4) Initiating and completing corrective action for a bag leak detection system alarm according to the corrective action plan required by § 63.7710(b)(5) and recording all information needed to document conformance with these requirements; and

(5) Igniting gases from mold vents according to the procedures in the plan required by § 63.7710(b)(6). (Any instance where you fail to follow the procedures is a deviation that must be included in your semiannual compliance report.)

(b) You must maintain a current copy of the operation and maintenance plans required by § 63.7710(b) onsite and available for inspection upon request. You must keep the plans for the life of the iron and steel foundry or until the iron and steel foundry is no longer subject to the requirements of this subpart.

§ 63.7746 What other requirements must I meet to demonstrate continuous compliance?

(a) Deviations. You must report each instance in which you did not meet each emissions limitation in § 63.7690 (including each operating limit) that applies to you. This requirement includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet each work practice standard in § 63.7700 and each operation and maintenance requirement of § 63.7710 that applies to you. These instances are deviations from the emissions limitations, work practice standards, and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements of § 63.7751.

(b) Startups, shutdowns, and malfunctions. During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with the requirements of §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

§ 63.7747 How do I apply for alternative monitoring requirements for a continuous emissions monitoring system?

(a) You may request an alternative monitoring method to demonstrate compliance with the VOHAP emissions limits in § 63.7690(a)(10) for automated pallet cooling lines or automated shakeout lines at a new iron and steel foundry according to the procedures in this section.

(b) You can request approval to use an alternative monitoring method in the notification of construction or reconstruction for new sources, or at any time.

(c) You must submit a monitoring plan that includes a description of the control technique or pollution prevention technique, a description of the continuous monitoring system or method including appropriate operating

parameters that will be monitored, test results demonstrating compliance with the emissions limit, operating limit(s) (if applicable) determined according to the test results, and the frequency of measuring and recording to establish continuous compliance. If applicable, you must also include operation and maintenance requirements for the monitors.

(d) The monitoring plan is subject to approval by the Administrator. Use of the alternative monitoring method must not begin until approval is granted by the Administrator.

Notifications, Reports, and Records

§ 63.7750 What notifications must I submit and when?

(a) You must submit all of the notifications required by §§ 63.6(h)(4) and (5), 63.7(b) and (c); 63.8(e); 63.8(f)(4) and (6); 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you start up your iron and steel foundry before April 22, 2004, you must submit your initial notification no later than August 20, 2004.

(c) If you start up your new iron and steel foundry on or after April 22, 2004, you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required by § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a notification of compliance status according to the requirements of § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to the requirement specified in § 63.10(d)(2).

§ 63.7751 What reports must I submit and when?

(a) Compliance report due dates. Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements specified in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your iron and steel foundry by § 63.7683 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your iron and steel foundry.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each iron and steel foundry that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of the dates specified in paragraphs (a)(1) through (4) of this section.

(b) Compliance report contents. Each compliance report must include the information specified in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took action consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from any emissions limitations (including operating limit), work practice standards, or operation and maintenance requirements, a statement that there were no deviations from the emissions limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS or CEMS) was out-of-control as specified by § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emissions limitation (including an operating limit) that occurs at an iron and steel foundry for which you are not using a continuous monitoring system (including a CPMS or CEMS) to comply with an emissions limitation or work practice standard required in this subpart, the compliance report must contain the information specified in paragraphs (b)(1) through (4) and (b)(7)(i) and (ii) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each emissions source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause) as applicable and the corrective action taken.

(8) For each deviation from an emissions limitation (including an operating limit) or work practice standard occurring at an iron and steel foundry where you are using a continuous monitoring system (including a CPMS or CEMS) to comply with the emissions limitation or work practice standard in this subpart, you must include the information specified in paragraphs (b)(1) through (4) and (b)(8)(i) through (xi) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviations during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting

period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) Immediate startup, shutdown, and malfunction report. If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements of § 63.10(d)(5)(ii).

(d) Part 70 monitoring report. If you have obtained a title V operating permit for an iron and steel foundry pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an iron and steel foundry along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emissions limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an iron and steel foundry to your permitting authority.

§ 63.7752 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (4) of this section:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements of § 63.10(b)(2)(xiv).

(2) The records specified in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required by § 63.10(b)(2)(viii).

(4) Records of the annual quantity of each chemical binder or coating material used to make molds and cores, the Material Data Safety Sheet or other documentation that provides the chemical composition of each component, and the annual quantity of HAP used at the foundry.

(b) You must keep the following records for each CEMS.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (*i.e.*, superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to relative accuracy tests for CEMS as required in § 63.8(f)(6)(i).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required by §§ 63.7743, 63.7744, and 63.7745 to show continuous compliance with each emissions limitation, work practice standard, and operation and maintenance requirement that applies to you.

§ 63.7753 In what form and for how long must I keep my records?

(a) You must keep your records in a form suitable and readily available for expeditious review, according to the requirements of § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to the requirements in § 63.10(b)(1). You can keep the records for the previous 3 years offsite.

Other Requirements and Information

§ 63.7760 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7761 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to non-opacity emissions limitations in § 63.7690 and work practice standards in § 63.7700 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Definitions

§ 63.7765 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in § 63.2, and in this section.

Automated conveyor and pallet cooling line means any dedicated conveyor line or area used for cooling molds received from pouring stations.

Automated shakeout line means any mechanical process unit designed for and dedicated to separating a casting from a mold. These mechanical processes include, but are not limited to, shaker decks, rotary separators, and high-frequency vibration units. Automated shakeout lines do not include manual processes for separating a casting from a mold, such as personnel using a hammer, chisel, pick ax, sledge hammer, or jackhammer.

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection

system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Binder chemical means a component of a system of chemicals used to bind sand together into molds, mold sections, and cores through chemical reaction as opposed to pressure.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device or to the atmosphere. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Cold box mold or core making line means a mold or core making line in which the formed aggregate is hardened by catalysis with a gas.

Combustion device means an afterburner, thermal incinerator, or scrap preheater.

Conveyance means the system of equipment that is designed to capture pollutants at the source, convey them through ductwork, and exhaust them using forced ventilation. A conveyance may, but does not necessarily include, control equipment designed to reduce emissions of the pollutants. Emissions that are released through windows, vents, or other general building ventilation or exhaust systems are not considered to be discharged through a conveyance.

Cooling means the process of molten metal solidification within the mold and subsequent temperature reduction prior to shakeout.

Cupola means a vertical cylindrical shaft furnace that uses coke and forms of iron and steel such as scrap and foundry returns as the primary charge components and melts the iron and steel through combustion of the coke by a forced upward flow of heated air.

Deviation means any instance in which an affected source or an owner or operator of such an affected source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emissions limitation (including operating limits), work practice standard, or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any iron and steel foundry required to obtain such a permit; or

(3) Fails to meet any emissions limitation (including operating limits) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Electric arc furnace means a vessel in which forms of iron and steel such as scrap and foundry returns are melted through resistance heating by an electric current flowing through the arcs formed between the electrodes and the surface of the metal and also flowing through the metal between the arc paths.

Electric induction furnace means a vessel in which forms of iron and steel such as scrap and foundry returns are melted though resistance heating by an electric current that is induced in the metal by passing an alternating current through a coil surrounding the metal charge or surrounding a pool of molten metal at the bottom of the vessel.

Emissions limitation means any emissions limit or operating limit.

Exhaust stream means gases emitted from a process through a conveyance as defined in this subpart.

Fresh acid solution means a sulfuric acid solution used for the control of triethylamine emissions that has a pH of 2.0 or less.

Fugitive emissions means any pollutant released to the atmosphere that is not discharged through a *conveyance* as defined in this subpart.

Furan warm box mold or core making line means a mold or core making line in which the binder chemical system used is that system commonly designated as a furan warm box system by the foundry industry.

Hazardous air pollutant means any substance on the list originally established in 112(b)(1) of the CAA and subsequently amended as published in the *Code of Federal Regulations.*

Iron and steel foundry means a facility or portion of a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce. Research and development facilities and operations that only produce non-commercial castings are not included in this definition.

Metal melting furnace means a cupola, electric arc furnace, or electric induction furnace that converts scrap, foundry returns, and/or other solid forms of iron and/or steel to a liquid state. This definition does not include a holding furnace, an argon oxygen decarburization vessel, or ladle that receives molten metal from a metal melting furnace, to which metal ingots or other material may be added to adjust the metal chemistry.

Mold or core making line means the collection of equipment that is used to mix an aggregate of sand and binder chemicals, form the aggregate into final shape, and harden the formed aggregate. This definition does not include a line for making green sand molds or cores.

Mold vent means an intentional opening in a mold through which gases containing pyrolysis products of organic mold and core constituents produced by contact with or proximity to molten metal normally escape the mold during and after metal pouring.

Pouring area means an area, generally associated with floor and pit molding operations, in which molten metal is brought to each individual mold. Pouring areas include all pouring operations that do not meet the definition of a pouring station.

Pouring station means the fixed location to which molds are brought in a continuous or semicontinuous manner to receive molten metal, after which the molds are moved to a cooling area.

Responsible official means responsible official as defined in § 63.2.

Scrap preheater means a vessel or other piece of equipment in which metal scrap that is to be used as melting furnace feed is heated to a temperature high enough to eliminate moisture and other volatile impurities or tramp materials by direct flame heating or similar means of heating.

Scrubber blowdown means liquor or slurry discharged from a wet scrubber that is either removed as a waste stream or processed to remove impurities or adjust its composition or pH before being returned to the scrubber.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

TABLE 1 TO SUBPART EEEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEEE

[As stated in § 63.7760, you must meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to Subpart EEEEE?	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and abbreviations	Yes.	
63.4	Prohibited activities	Yes.	
63.5	Construction/reconstruction	Yes.	
63.6(a)–(g)	Compliance with standards and maintenance requirements.	Yes.	
63.6(h)	Opacity and visible emissions standards.	Yes.	
63.6(i)–(j)	Compliance extension and Presidential compliance exemption.	Yes.	
63.7(a)(1)–(a)(2)	Applicability and performance test dates.	No	Subpart EEEEE specifies applicability and performance test dates.
63.7(a)(3), (b)–(h)	Performance testing requirements	Yes.	
63.8(a)(1)–(a)(3), (b), (c)(1)–(c)(3), (c)(6)–(c)(8), (d), (e), (f)(1)–(f)(6), (g)(1)–(g)(4).	Monitoring requirements	Yes	Subpart EEEEE specifies requirements for alternative monitoring systems.
63.8(a)(4)	Additional monitoring requirements for control devices in § 63.11.	No	Subpart EEEEE does not require flares.
63.8(c)(4)	Continuous monitoring system (CMS) requirements.	No	Subpart EEEEE specifies requirements for operation of CMS and CEMS.
63.8(c)(5)	Continuous opacity monitoring system (COMS) Minimum Procedures.	No	Subpart EEEEE does not require COMS.
63.8(g)(5)	Data reduction	No	Subpart EEEEE specifies data reduction requirements.
63.9	Notification requirements	Yes.	
63.10(a)–(b), (c)(1)–(6), (c)(9)–(15), (d)(1)–(2), (e)(1)–(2), (f).	Recordkeeping and reporting requirements.	Yes	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15) apply only to CEMS.
63.10(c)(7)–(8)	Records of excess emissions and parameter monitoring exceedances for CMS.	No	Subpart EEEEE specifies records requirements.
63.10(d)(3)	Reporting opacity or visible emissions observations.	Yes.	
63.10(e)(3)	Excess emissions reports	No	Subpart EEEEE specifies reporting requirements.
63.10(e)(4)	Reporting COMS data	No	Subpart EEEEE data does not require COMS.
63.11	Control device requirements	No	Subpart EEEEE does not require flares.
63.12	State authority and delegations	Yes.	
63.13–63.15	Addresses of State air pollution control agencies and EPA regional offices. Incorporation by reference. Availability of information and confidentiality.	Yes.	

Editorial Note: This document was received in the Office of the Federal Register on September 5, 2003.

[FR Doc. 04–8977 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

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Thursday, April 22, 2004

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H.R. 2584/P.L. 108–219

To provide for the conveyance to the Utrok Atoll local government of a decommissioned National Oceanic and Atmospheric Administration ship, and for other purposes. (Apr. 13, 2004; 118 Stat. 615)

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