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Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV98-905-4 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is finalizing without change the provisions of an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market under the Florida citrus marketing order. The marketing order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule continues in effect limits on the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1998-1999 season that began in September. The limits provided a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. The committee believed this action was necessary to help stabilize the market and improve grower returns.

EFFECTIVE DATE: February 25, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299-4770, Fax: (941) 299-5169; or Anne Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box

96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 205-6632, or E-mail:

Jay_N_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are 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 is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule limited the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1998-99 season beginning in September. 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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3 $\frac{5}{16}$ inches in diameter).

Section 905.52 of the citrus marketing order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week is established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the order provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the committee may recommend that only a certain percentage of size 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The 11 week period begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

This rule finalizes the provisions of an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market for each week of an 11 week period beginning the week of September 21, 1998. A proposed rule was published on August 11, 1998, in the **Federal Register** (63 FR 42764). Subsequently, an interim final rule was published September 28, 1998, in the **Federal Register** (63 FR 51511). That rule limited the volume of small red seedless grapefruit entering the fresh market for each week of an 11 week period beginning the week of September 21. That rule limited the volume of sizes 48 and/or 56 red seedless grapefruit by establishing a weekly percentage for each of the 11 weeks. This rule finalizes the interim final rule without change. The interim rule established the weekly percentage for the first seven weeks (September 21 through November 8) at 37 percent and for the final four weeks (November 9 through December 6) at 32 percent.

The interim final rule included a change in the percentages originally recommended by the committee. The committee had voted to establish a weekly percentage of 25 percent for each of the 11 weeks in a vote of 14 in favor to 2 opposed at its meeting on May 22, 1998. The committee's initial recommendation was issued as a proposed rule published on August 11, 1998 (63 FR 42764). No comments were received during the comment period which expired August 31, 1998. The committee subsequently recommended adjusting the proposed percentages at its meeting September 3, 1998, in a vote of 13 in favor to 1 opposed.

For the seasons 1994–95, 1995–96, and 1996–97, returns on red seedless grapefruit had been declining, often not returning the cost of production. On tree prices for red seedless grapefruit had fallen steadily from \$9.60 per carton ($\frac{3}{8}$ bushel) during the 1989–90 season, to \$3.45 per carton during the 1994–95 season, to a low of \$1.41 per carton during the 1996–97 season.

The committee determined that one problem contributing to the market's condition was the excessive number of small sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless

grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

For the majority of the season, larger sizes return higher prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the high prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is \$4 to \$6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around \$10.00 per carton. This compares to an average f.o.b. of \$5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. for large sizes dropped to within two dollars of the f.o.b. for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. of \$7.80 per carton to an average f.o.b. of \$5.50 per carton during the period covered by this rule. Even though later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market had already been negatively affected. During the three seasons, the market did not recover, and the f.o.b. for all sizes fell to around \$5.00 to \$6.00 per carton for most of the rest of the season.

The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF-IFAS) in May 1997, found that on tree prices had fallen from a high near \$7.00 in 1991–92 to around \$1.50 for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around \$1.50. The study also indicated that increasing minimum size restrictions could help raise returns.

To address this issue, the committee voted to utilize the provisions of § 905.153, and establish weekly percentage of size regulation during the first 11 weeks of the 1997–98 season. The initial recommendation from the committee was to set the weekly percentage at 25 percent for each of the 11 weeks. As more information on the crop became available, and as the season progressed, the committee met several times and adjusted its

recommendations for the weekly percentages. The committee considered information from past seasons, crop estimates, fruit size, and other information to make their recommendations. Actual weekly percentages established during the 11 week period during the 1997–98 season were 50 percent for the first three weeks, and 35 percent for the other eight weeks.

In making this recommendation, the committee reviewed its experiences from the past season, and those of prior seasons. The committee believes establishing weekly percentages last season was successful. The committee examined shipment data covering the 11 week regulatory period for the last season and the four prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week and weekly f.o.b. figures. During the 11 week period, the regulation was successful at helping maintain prices at a higher level than the prior season, and sizes 48 and 56 by count and as a percentage of total shipments were reduced.

In comparison with f.o.b. prices from the 1996–97 season, for weeks when pricing information was available (weeks 6 through 11), last season's numbers were higher in five of the six weeks. The average f.o.b. for these weeks was \$6.28 for the 1996–97 season and \$6.55 for the 1997–98 season. Last season, sizes 48 and 56 represented only 31 percent of total shipments during the 11 week regulatory period as compared to 38 percent during the previous season. There was also a 15 percent reduction in shipments of sizes 48 and 56 by count for the 11 weeks.

Other information also indicates the regulation was successful. In past seasons, the on tree price had been dropping steadily. However, on tree prices for the month following the 11 weeks of regulation indicate that in December 1997 the on tree price for grapefruit was \$2.26 compared to \$1.55 for the previous season.

The committee was concerned that the glut of smaller, lower priced fruit on the early market was driving down the price for all sizes. There was a steep decline in prices for larger sizes in previous seasons. During the six weeks for mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996–97 season. Prices for the same sizes during the same period fell only 5, 5, 2, and 7 percent, respectively, last season with regulation. In fact, prices for all sizes were firmer during this period for last season when compared to the previous

year, with the weighted average price dropping only 9 percent during this period as compared to 22 percent for the previous season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, with larger sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher priced, larger sized grapefruit which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996-97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period last season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

A subcommittee had been formed to examine how weekly percentage of size regulation could best be used. The subcommittee recommended to the full committee that the weekly percentage of size regulation should be set at 25 percent for the 11 week period. Members believed that the problems associated with an uncontrolled volume of small sizes entering the market early in the season would continue. The subcommittee thought that to provide the committee with the most flexibility, the weekly percentage should be set at 25 percent for each of the 11 weeks in the regulated period. The subcommittee believed it was best to set regulation at the most restrictive level, and then relax the percentage as warranted by conditions later in the season. The subcommittee also recommended that the committee meet on a regular basis early in the season to consider adjustments in the weekly percentage rates as was done in the previous season.

The recommendations of the subcommittee were reviewed by the committee at its meeting on May 22, 1998. In its discussion, the committee recognized the need for and the benefits of the weekly percentage regulation. The committee agreed with the findings of the subcommittee, and recommended establishing the base percentage at 25 percent for each of the regulation weeks. This is as restrictive as § 905.153 will allow.

In making this recommendation, the committee considered that by establishing regulation at 25 percent, they could meet again in August and the months following and use the best information available to help the industry and the committee make the most informed decisions as to whether the established percentage is appropriate.

Based on this information and the experiences from last season, the committee agreed to establish the weekly percentage at the most restrictive level, then meet in late August, and in September and October as needed when additional information is available and determine whether the set percentage level is appropriate. They said this is essentially what was done the prior year, and it had been very successful. The committee had met in May 1997, and recommended a weekly percentage be established at 25 percent for each of the eleven weeks. In August, the committee met again, and recommended that the weekly percentage be relaxed. They met again in October, and recommended further relaxations. Changes to any established weekly percentages require additional rulemaking and the approval of the Secretary.

The committee noted that more information helpful in determining the appropriate weekly percentages would be available after August. At the time of the May meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October.

The committee met again on September 3, 1998, and revisited the weekly percentage issue and reviewed the information it had acquired since its May 22, 1998, meeting. At the meeting, the committee recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6).

In its discussion of this change, the committee reviewed the initial percentages recommended and the current state of the crop. The committee also reexamined shipping information from past seasons, looking particularly at volume across the 11 weeks. Based on this review, the committee agreed that setting the weekly percentage at 25 percent would be too restrictive and that allowing 37 percent for the first seven weeks and 32 percent for the final four weeks was more appropriate.

In its deliberations, the committee agreed that the weekly percentage of 35 percent that was in place for the majority of the weeks regulated last season was effective. This percentage seemed to have provided a sufficient volume of small sizes to service those markets, while being restrictive enough to prevent over supply.

During deliberations last season on weekly percentages, the committee considered how past shipments had affected the market. Based on statistical information, committee members believed there was an indication that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The committee believed that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

As for this season, the committee wanted to recommend a weekly percentage that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. They also originally recommended that the percentage for each of the 11 weeks be established at the 25 percent level. This percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment of approximately 244,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. The total shipments of small red seedless grapefruit would approach the 250,000 carton mark during regulated weeks without exceeding it.

However, during the 11 week period of weekly percentage regulation last season, the committee recommended increasing the weekly percentages to 35 percent for the majority of the 11 weeks, similar to what was recommended for this season. Even with the weekly percentage at 35 percent, shipments of sizes 48 and 56 remained close to the 250,000 carton mark during the 11 weeks. In only 3 of the 11 weeks did the volume of sizes 48 and 56 exceed 250,000 cartons, and even then, by not more than 35,000 cartons.

The committee recognized that since last season a number of packinghouses have gone out of business, lowering the total allotment available to the industry. The committee believed that adjusting the 35 percent to 37 percent would provide for the allotment lost and increase the total allotment available to the industry for loan or transfer. Therefore, the committee recommended relaxing the weekly percentage to 37

percent for the first seven weeks of the regulated period.

The committee further recommended that the weekly percentage for the last four weeks of the 11 weeks be established at 32 percent. The committee resolved that a lower percentage was desirable moving into the last four weeks of regulation. The committee believed that 32 percent was a viable figure as the season progressed because the crop would have begun to size and there would be a greater availability of larger sizes. The committee believed that as the industry moved into the season and shipments increased, a weekly percentage of 32 percent would provide the best balance between supply and demand for small sized red seedless grapefruit.

The committee again included in its deliberations that if crop and market conditions should change, the committee could recommend that the percentages be increased or eliminated to provide for the shipment of more small sizes in any one, or all of the 11 weeks. After examining the way the crop was sizing and maturing, the committee believed the rule at 25 percent was too restrictive and that the change to 37 percent for the first seven weeks and 32 percent for the last four weeks was preferable. They decided that a loosening of the regulated percentages could be done without adversely affecting the marketable quantity and returns on these small sizes. The interim final rule allowed all packinghouses to take advantage of the increased percentages, while not oversupplying the market.

While the official crop estimate was not available until October, there were indications that the grapefruit crop was not as large as in 1997-98. Also, grapefruit had been slow in maturing this season due to scattered rains and hot summer temperatures. This caused the harvest season to start late and may mean a greater volume of smaller sizes. Using this information on the 1998-99 crop, the committee members believed that relaxing the weekly percentages as recommended provided enough small sizes to supply those markets without disrupting the markets for larger sizes.

Under § 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that could be shipped by a handler during a regulated week was calculated using the recommended percentage of 37 or 32 percent depending on the regulated week. By taking the weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers could calculate the volume of sizes 48

and/or 56 they could ship in a regulated week.

An average week was calculated by the committee for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons were added and divided by five to establish an average season. This average season was then divided by the 33 weeks to derive the average week. This average week was the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 37 or 32 percent, was multiplied by a handler's average week. The product was that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

The calculated allotment is the amount of small sized red seedless grapefruit a handler could ship. The minimum size was established under § 905.52 at size 56, and handlers could fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments were within the established limits. The committee staff performed the specified calculations and provided them to each handler.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season is then divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This is Handler A's base. The weekly percentage of 37 percent is then applied to this amount. This provides this handler with a weekly allotment of 592 cartons ($1,600 \times .37$) of size 48 and/or 56.

The average week for handlers with less than five previous seasons of shipments is calculated by the committee by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments have no prior period on which to base their average week. Therefore, under the established procedures, a new handler could ship small sizes equal to 37 percent of their total volume of shipments during their first shipping week. Once a new handler had established shipments, their average week would be calculated as an average

of the weeks they shipped during the current season.

This rule finalizes, without change, the weekly percentages for each of the eleven weeks of the regulatory period (September 21 through December 6) that appeared in the interim final rule.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler could handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) is deducted from the handler's allotment for the following week. Overshipments are not allowed during week 11 because there are no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped will not be carried forward to the following week. However, a handler to whom an allotment has been issued could lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party will, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party will promptly notify the committee so that proper adjustments of the records could be made. In each case, the committee confirms in writing all such transactions prior to the following week. The committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan.

The committee computed each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee notified each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could

handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

During committee deliberations at the May 22, 1998, meeting, several concerns were raised regarding the regulation. One area of concern was the way allotment base is calculated. Two members commented that the rule was not fair to those handlers that shipped the majority of their grapefruit shipments during the 11 week period. They said that using a 33 week season as the basis for allotment was not reflective of their shipments during the regulated period, and that their allotment was not enough to cover their customer base.

The committee chose to use the past five seasons to provide the most accurate picture of an average season. When recommending procedures for establishing weekly percentage of size regulation for red seedless grapefruit, the committee discussed several methods of measuring a handler's volume to determine this base. It was decided that shipments for the five previous years and for the 33 weeks beginning the third Monday in September to the first Sunday the following May should be used for calculation purposes.

This bases allotment on a 33 week period of shipments, not just a handler's early shipments. This was done specifically to accommodate small shippers or light volume shippers, who may not have shipped much grapefruit in the early season. The use of an average week based on 33 weeks also helps adjust for variations in growing conditions that may affect when fruit matures in different seasons and growing areas. After considering different ways to calculate the average week, the committee settled on this method as the definition of prior period that provides each handler with an equitable base from which to establish shipments.

In its discussion, the committee recognized that there were concerns regarding the way base is calculated. However, committee members also stated that this type of regulation is intended to be somewhat restrictive, and providing a system that satisfies everyone is difficult, if not impossible, to achieve. There was general agreement that this method was the best option considered thus far. Another member commented that this option also provides a larger industry base than an 11 week calculation, supplying a greater amount of available base overall.

In regards to whether their allotment is enough to cover their customer base, the procedures under which this rule

was recommended provide flexibility through several different options. Handlers could transfer, borrow or loan allotment based on their needs in a given week. Handlers also had the option of overshipping their allotment by 10 percent in a week, as long as the overshipment was deducted from the following week's shipments. Statistics show that in none of the regulated weeks was the total available allotment used. The closest it came was 83 percent of available base used. However, this still left an available allotment for loan or transfer of over 57,000 cartons. Approximately 190 loans and transfers were utilized last season. To facilitate this process, the committee staff provided a list of handler names and telephone numbers to help handlers find possible sources of allotment if needed for loan or trade. Also, this regulation only restricts shipments of small sized red grapefruit. There are no volume restrictions on larger sizes.

Another concern expressed was that the rule only covers red seedless grapefruit. One member wanted the committee to consider adding white grapefruit to the regulation. The member also asked that the committee continue to consider other possibilities on which to base regulation. The committee agreed that the provisions by which this regulation is recommended should be reviewed on a continuous base. It was also stated that should the committee want to change § 905.153, the section outlining the procedures for setting weekly percentage of size regulation, they could consider it as part of the current meeting. No motions for change were received.

Another concern expressed was that the committee was considering meeting too often during the regulatory period to consider changing the weekly percentages. The member said that marketing plans are made further in advance than two to three weeks. The committee responded that information that is valuable in considering the appropriate percentage levels is not available until the regulatory period begins. Members agreed that it was important to meet and adjust percentages as necessary as seasonal information becomes available.

At the September 3, 1998, meeting, the concern was raised that the weekly percentages recommended were not high enough. One member expressed that they had routinely shipped all their allotment and that the weekly percentages should be higher. The committee responded that the provisions for loans, transfers, and overshipment were available to offset such problems. With the weekly

percentages established, total industry allotment should exceed shipments for the majority of the 11 weeks, so that some allotment should be available for loan or transfer.

After considering the concerns expressed, and the available information, the committee determined that this rule is needed to regulate shipments of small sized red seedless grapefruit.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

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 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 80 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) 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 \$500,000 (13 CFR 121.601).

Based on the industry and committee data for the 1997–98 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1997–98 season was around \$6.30 per $\frac{1}{4}$ bushel cartons, and total fresh shipments for the 1997–98 season are estimated at 15.5 million cartons of red grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers, and growers may be classified as small entities.

Under the authority of § 905.52 of the order, this rule limits the volume of small red seedless grapefruit entering the fresh market during the 11 weeks beginning the third Monday in September for the 1998–99 season. This rule utilizes the provisions of § 905.153. This rule limits the volume of sizes 48 and/or 56 red seedless grapefruit by setting the weekly percentage for each of the 11 weeks at 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6). This is a change from the committee's original recommendation of a 25 percent weekly percentage for each of the 11 weeks. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the established percentage.

By taking the established percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee calculates a handler's weekly allotment of small sizes. The rule sets the weekly percentage at 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6) of the 11 week period. This rule provides a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This rule is necessary to help stabilize the market and improve grower returns during the early part of the season.

At the May 22, 1998, meeting, the committee recommended that the percentage for each of the 11 weeks be

established at the 25 percent level. They reasoned that this percentage, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 239,243 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This percentage would have allowed total shipments of small red seedless grapefruit to approach the 250,000 carton mark during regulated weeks without exceeding it.

The committee met again September 3, 1998, and revisited the weekly percentage issue. The committee recommended that the weekly percentages be set to 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6).

The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 250,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. Based on shipments from seasons 1993–97, a total available weekly allotment of 250,000 cartons would exceed actual shipments for each of the first three weeks that will be regulated under this rule. In addition, if a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to the 1996–97 season, an average of 4.2 percent of overall shipments during that period would have been affected. This rule affects even fewer shipments by establishing less restrictive weekly percentages. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. Under this rule a sufficient volume of small sized red grapefruit will still be allowed into all channels of trade, and allowances will be in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry cost should be minimal.

The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is \$4 to \$6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around \$10.00 per carton. This compares to an average f.o.b. of \$5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. for large sizes has dropped to within two dollars of the f.o.b. for small sizes.

The over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on tree prices had fallen from a high near \$7.00 in 1991–92 to around \$1.50 for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around \$1.50. The study also indicated that increasing minimum size restrictions could help raise returns.

This regulation will have a positive impact on affected entities. The purpose of this rule is to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. There are no volume restrictions on larger sizes. Therefore, larger sizes could be substituted for smaller sizes with a minimum effect on overall shipments. While this rule may necessitate spot picking, which may entail slightly higher harvesting costs, many in the industry are already using the practice, and because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

This rule helps limit the effects of an over supply of small sizes early in the season. A similar rule was enacted successfully last season. During the 11 week period, the regulation was successful at helping maintain prices at a higher level than the prior season, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. Therefore, this action should have a positive impact on grower returns.

For the weeks when pricing information was available, last season's prices were higher in five of the six weeks when compared with f.o.b. prices from the 1996–97 season. The average f.o.b. for these weeks was \$6.28 for the 1996–97 season and \$6.55 for the 1997–98 season. It also reduced sizes 48 and 56 as a percentage of the crop. Last season sizes 48 and 56 represented 31 percent of shipments during the 11 week regulatory period, compared to 38 percent during the previous season. There was also a 15 percent reduction in shipments of sizes 48 and 56 by count. Numbers from the month following the 11 weeks of regulation also indicate that in December 1997 the on tree price for grapefruit was \$2.26 compared to \$1.55 for the previous season.

The rule was also successful in reducing the steep drop in prices for larger sizes that had occurred in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996-97 season. Prices for the same sizes during the same period last season only fell by 5, 5, 2, and 7 percent, respectively, under regulation. Prices for all sizes were firmer during this period last season when compared to the previous year, with the weighted average price dropping only 9 percent during this period last season as compared to 22 percent for the previous season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study indicated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. Prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, with larger sized grapefruit registering modest improvements. It also stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the 11 weeks during the 1996-97 season, compared to only 17 percent during the same period last season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

Even with restrictions in place, total shipments during the 11 week period last season were higher than the previous season. There was also no noticeable drop in exports. Therefore, shipments remained strong and prices were stabilized during the regulated period.

The interim final rule increased the weekly percentages over the percentages originally recommended at the May 22, 1998, meeting. The changes recommended by the committee at its September 3, 1998, meeting set the percentages at a higher level, and at levels comparable to last season. These percentages were still restrictive, but allowed the utilization of more small sized fruit. During the 11 week period of weekly percentage regulation last season, the committee recommended increasing the weekly percentages to 35 percent for the majority of the 11 weeks, similar to what was recommended for this season. Even with the weekly percentage at 35 percent, shipments of sizes 48 and 56 remained close to the 250,000 carton mark during the 11 weeks. In only 3 of the 11 weeks did the

volume of sizes 48 and 56 exceed 250,000 cartons, and even then, by not more than 35,000 cartons.

Over 50 percent of red seedless grapefruit is shipped to the fresh market. Because of reduced demand and an oversupply, the processing outlet is not currently profitable. Consequently, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action will only be for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season.

This rule is intended to stabilize the market during the early season and increase grower returns. Information available from last season suggests the regulation could do both. A stabilized price that returns a fair market value benefits both small and large growers and handlers. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation.

One alternative to the actions approved was considered by the committee prior to making the recommendations at the May 22, 1998, meeting. The alternative discussed was whether to amend § 905.153 in conjunction with setting a weekly percentage. Two members suggested that the calculation used to determine a handler's allotment base should be changed from 33 weeks to a calculation that used the 11 weeks regulated by the rule. In its discussion, the committee recognized that there were concerns regarding the way base is calculated. However, committee members also stated that this type of regulation is intended to be somewhat restrictive, and providing a system that satisfies everyone is difficult, if not impossible, to achieve. There was general agreement that though this method had its concerns, it was the best option considered thus far. Therefore, the committee rejected this alternative, concluding the recommendations previously discussed were appropriate for the industry.

Another alternative action was considered at the September 3, 1998, meeting. Rather than changing all the weekly percentages, it was suggested that the committee only consider three weeks at a time in making its recommendations for change. The committee would then meet before each three week period began to consider the appropriate weekly percentages for those three weeks. The committee agreed that it was important to meet on a regular basis during the regulation period to help ensure that the weekly

percentages are at the appropriate level. However, the committee also recognized that marketing plans are made more than three weeks in advance, and that it was important to try to provide handlers with as much advance notice of their allotment of small sizes as possible. Therefore, the committee rejected this alternative.

Handlers utilizing the flexibility of the loan and transfer aspects of this action will be required to submit a form to the committee. The rule increases the reporting burden on approximately 80 handlers of red seedless grapefruit who will be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and assigned OMB number 0581-0094. 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.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the committee's meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the May 22, 1998, meeting, and the September 3, 1998, meeting were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, August 11, 1998 (63 FR 42764). A 20-day comment period was provided to allow interested persons to respond to the proposal. The comment period ended August 31, 1998. No comments were received. An interim final rule concerning this action was published in the **Federal Register** on Monday, September 28, 1998 (63 FR 51511). A 10-day comment period was provided to allow interested persons to respond to the rule. The comment period ended October 8, 1998. No comments were received. Copies of both rules were mailed or sent via facsimile

to all committee members and to grapefruit growers and handlers. The rules were also made available through the Internet by the Office of the Federal Register.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 51511, September 28, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 63 FR 51511 on September 28, 1998, is adopted as a final rule without change.

Dated: January 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-1786 Filed 1-25-99; 8:45 am]

BILLING CODE 3410-02-U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS-98-002]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 1996. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 111 to 110, effective with the Secretary's appointments for terms beginning early in the year 2000.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT:

Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Program, Agricultural Marketing Service (AMS), Stop 0251, 1400 Independence Avenue, SW., Washington, D.C. 20250-0251. Telephone number 202/720-1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the January 30, 1998, issue of "Cattle," the Department's National Agricultural Statistics Service (NASS) estimates that in 1997 the number of cattle operations in the United States totaled about 1.17 million. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration.

The final rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. This action will adjust representation on the Board, established under the Act. The adjustments are required by the Order and would result in a decrease in Board membership from 111 to 110.

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder (7 CFR 1260.101 *et seq.*). Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the

conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members with appointments for terms effective in early in 1997.

The current Board representation by States or units has been based on an average of the January 1, 1993, 1994, and 1995 inventory of cattle in the

various States as reported by NASS of the Department. Importer representation has been based on a combined total average of the 1992, 1993, and 1994 live cattle imports as published by the Foreign Agricultural Service (FAS) of the Department and the average of the 1992, 1993, and 1994 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its July 19, 1998, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1995, to January 1, 1998. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1996, 1997, and 1998 Department cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the 1996 reapportionment rule.

The Board reviewed the March 1998 FAS circular, "U.S. Trade and Prospects, Dairy, Livestock, and Poultry," to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1995, 1996, and 1997 cattle import data and the average of the 1995, 1996, and 1997 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its July 19, 1998, meeting to be consistent with the procedures used for domestic representation.

On August 28, 1998, AMS published in the **Federal Register** (63 FR 45969) for public comment a proposed rule providing for the adjustment in Board membership.

The Department did not receive any comments concerning the proposed rule. Thus, the reapportionment of the Board in this final rule is unchanged from the proposed rule. The final rule decreases the number of representatives on the Board from 111 to 110. Two States and one unit—Missouri, Texas, and the Northwest unit—lose one member each; two States—Kansas and Nebraska—gain one member each. As recommended by the Board, the two member Western unit, composed of Nevada and Oregon which was formed in the most recent reapportionment because Nevada did not have sufficient cattle inventory to qualify

independently for a position on the Board is dissolved. Since Nevada and Oregon each qualify for a Board member based on the 1996–98 inventory numbers, Nevada and Oregon are once again listed separately with one member each. The States and units affected by the reapportionment and the current and revised member representation per unit are as follows:

States	Current representation	Revised representation
1. Kansas	6	7
2. Missouri	5	4
3. Nebraska	6	7
4. Texas	15	14
5. Northwest unit	2	1
6. Western unit	2	0
7. Nevada	0	1
8. Oregon	0	1

The 1998 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment will be effective with the 1999 nominations and appointments which will be effective early in the year 2000.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. In section 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 1999 Board nominations and the associated appointments effective early in the year 2000, the United States shall be divided into 40 geographical units and one unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES ¹

State/unit	(1,000 head)	Directors
1. Alabama	1,627	2
2. Arizona	810	1
3. Arkansas	1,870	2
4. California	4,600	5

CATTLE AND CALVES ¹—Continued

State/unit	(1,000 head)	Directors
5. Colorado	3,117	3
6. Florida	1,937	2
7. Georgia	1,497	1
8. Idaho	1,763	2
9. Illinois	1,720	2
10. Indiana	1,103	1
11. Iowa	3,867	4
12. Kansas	6,550	7
13. Kentucky	2,550	3
14. Louisiana	1,010	1
15. Michigan	1,133	1
16. Minnesota	2,767	3
17. Mississippi	1,3431	1
18. Missouri	4,450	4
19. Montana	2,683	3
20. Nebraska	6,517	7
21. Nevada	510	1
22. New Mexico	1,480	1
23. New York	1,527	2
24. North Carolina	1,160	1
25. North Dakota	1,857	2
26. Ohio	1,483	1
27. Oklahoma	5,467	5
28. Oregon	1,440	1
29. Pennsylvania	1,770	2
30. South Carolina	517	1
31. South Dakota	3,733	4
32. Tennessee	2,460	2
33. Texas	14,467	1
34. Utah	903	1
35. Virginia	1,797	2
36. Wisconsin	3,700	4
37. Wyoming	1,477	1
38. Northwest .....	.....	1
Alaska	11	.....
Hawaii	167	.....
Washington	1,230	.....
Total	1,408	.....
39. Northeast .....	.....	1
Connecticut	70	.....
Delaware	29	.....
Maine	113	.....
Massachusetts	63	.....
New Hampshire	41	.....
New Jersey	68	.....
Rhode Island	7	.....
Vermont	302	.....
Total	693	.....
40. Mid-Atlantic .....	.....	1
District of Columbia	0	.....
Maryland	275	.....
West Virginia	447	.....
Total	722	.....
41. Importer ²	6,535	7

¹ 1996, 1997, and 1998 average of January 1 cattle inventory data.

² 1995, 1996, and 1997 average of annual import data.

* * * * *

Dated: January 21, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99-1785 Filed 1-25-99; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-CE-34-AD; Amendment 39-11006; AD 99-02-14]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company Model 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 2000 airplanes (commonly referred to as Beech Model 2000 airplanes). This AD requires inspecting the stainless steel fuel line, part number (P/N) 3035737, for evidence of chafing and a minimum clearance between the fuel line and power lever bracket, P/N 122-940028-1; and replacing the fuel line and modifying the power lever bracket, as necessary. This AD is the result of chafing found on the stainless steel fuel line on several of the affected airplanes. The actions specified by this AD are intended to prevent fuel line chafing caused by interference with the power lever bracket, which could result in fuel leakage and cause a fire in the engine compartment.

DATES: Effective March 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 625-7043. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-34-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Scott West, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4146; facsimile: (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 2000 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 2, 1998 (63 FR 46711). The NPRM proposed to require inspecting the stainless steel fuel line, part number (P/N) 3035737, for evidence of chafing and a minimum clearance between the fuel line and power lever bracket, P/N 122-940028-1; and replacing the fuel line and modifying the power lever bracket, as necessary. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Raytheon Mandatory Service Bulletin SB.28-3104, Issued: September, 1997.

The NPRM was the result of chafing found on the stainless steel fuel line on several of the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 49 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish this action and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$465 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$34,545, or \$705 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99-02-14 Raytheon Aircraft Company
(Type Certificate No. A38CE formerly held by the Beech Aircraft Corporation); Amendment 39-11006; Docket No. 98-CE-34-AD.

Applicability: Model 2000 airplanes, serial numbers NC-4 through NC-53, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent fuel line chafing caused by interference with the power lever bracket, which could result in fuel leakage and cause a fire in the engine compartment, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the engine stainless steel fuel line, part number (P/N) 3035737, for evidence of chafing and a minimum clearance of .06-inch between the fuel line and power lever bracket, P/N 122-940028-1. Accomplish this inspection in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997.

(b) If chafing is evident on the fuel line, prior to further flight, replace the fuel line with a new fuel line and modify the power lever bracket in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997.

(c) If the clearance between the fuel line and the power lever bracket is less than .06-inch, prior to further flight, modify the power lever bracket in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997.

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

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) The inspection, replacement, and modification required by this AD shall be done in accordance with Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on March 5, 1999.

Issued in Kansas City, Missouri, on January 12, 1999.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-1238 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-CE-78-AD; Amendment 39-11007; AD 99-02-15]

RIN 2120-AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Avions Pierre Robin Model R2160 airplanes. This AD requires repetitively inspecting the engine bearer for cracks, and replacing the engine bearer with a reinforced part either immediately or at a certain time period depending on whether cracks are found during the inspections. Replacing the engine bearer with a reinforced part terminates the repetitive inspection requirement. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to detect and correct cracks in the engine bearer, which could result in the engine separating from the airplane.

DATES: Effective March 29, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 29, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-78-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 80 44 20 50; facsimile: 80 35 60 80. This information may also be examined at the Federal

Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-78-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6932; facsimile: (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

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 certain Avions Pierre Robin Model R2160 airplanes. The DGAC reports cracks in the engine bearer in the area of the spools.

This condition, if not detected and corrected, could result in the engine separating from the airplane.

Relevant Service Information

Avions Pierre Robin has issued Service Bulletin No. 97, dated April 22, 1983, which specifies procedures for inspecting the engine bearer for cracks. This service bulletin also specifies replacing the engine bearer with a reinforced part.

The DGAC classified this service bulletin as mandatory and issued French AD 83-99-(A), dated June 15, 1983, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Pierre Robin Model R2160 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires repetitively inspecting the engine bearer for cracks, and replacing the engine bearer with a reinforced part either immediately or at a certain time period depending on whether cracks are found during the inspections. Replacing the engine bearer with a reinforced part terminates the repetitive inspection requirement. Accomplishment of the inspections required by this AD is required in accordance with Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983. The replacement specified in the service bulletin and required by this AD shall be accomplished in accordance with the applicable maintenance manual.

Cost Impact

The FAA estimates that 1 airplane in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required actions, and that the average labor rate is approximately \$60 per work hour. Parts cost approximately \$1,587 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be \$2,067.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with Section 11.17 of the Federal Aviation Regulations (14 CFR 11.17) unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be

published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-CE-78-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866;

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99-02-15 Avions Pierre Robin:

Amendment 39-11007; Docket No. 98-CE-78-AD.

Applicability: Model R2160 airplanes, serial numbers C193 through C199, and C202; certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct cracks in the engine bearer, which could result in the engine separating from the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 25 hours TIS until the replacement required

by paragraph (b) of this AD is accomplished, visually inspect the engine bearer for cracks. Accomplish the inspections in accordance with Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983.

(b) At whichever of the compliance times in paragraphs (b)(1) and (b)(2) of this AD that occurs first, replace the engine bearer with a reinforced part (or FAA-approved equivalent), as referenced in Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983. Accomplish the replacement in accordance with the applicable maintenance manual.

(1) Prior to further flight if cracks are found during any inspection required by paragraph (a) of this AD; or

(2) Within the next 100 hours TIS after the effective date of this AD.

(c) Replacing the engine bearer with a reinforced part, as specified in paragraph (b) of this AD, is considered terminating action for the repetitive inspection requirement of this AD.

(d) As of the effective date of this AD, no person may install, on any affected airplane, an engine bearer that is not one of a reinforced part (or FAA-approved equivalent part number), as referenced in Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983.

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

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(g) The inspections required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 83-99-(A), dated June 15, 1983.

(h) This amendment becomes effective on March 29, 1999.

Issued in Kansas City, Missouri, on January 12, 1999.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-1237 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-SW-20-AD; Amendment 39-11010; AD 98-11-15]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98-11-15, which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) Model 212 helicopters by individual letters. This AD requires inspecting the trunnion assembly or tail rotor flapping stop (flapping stop), whichever is applicable, installing a trunnion assembly or flapping stop, if necessary; and replacing the tail rotor yoke (yoke). This amendment is prompted by an accident involving a BHTI Model 205A-1 helicopter in which the yoke failed during flight. This condition, if not corrected, could lead to failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective February 10, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 98-11-15, issued on May 19, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98-SW-20-

AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280-3391, fax (817) 280-6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandra Shelly, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5177, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION: On May 19, 1998, the FAA issued priority letter AD 98-11-15, applicable to BHTI Model 212 helicopters, which requires, before further flight, reviewing historical records of the helicopter and the yoke assembly to detect any usage or event that may have imposed an excessive bending load on the yoke. If such usage or event occurred, before further flight, this AD requires replacing the yoke assembly with an airworthy yoke assembly that has zero-hours TIS, or that has passed an x-ray diffraction inspection in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 212-96-100, Revision A, dated May 18, 1998, or ASB 212-96-101, dated September 3, 1996, whichever is applicable, as well as installing an airworthy trunnion assembly or an airworthy flapping stop, depending on which part-numbered yoke assembly is installed. If no usage or event that may have imposed an excessive bending load on the yoke has occurred, the yoke must be replaced within 180 calendar days. Thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident that may have imposed an excessive bending load on the yoke, this AD requires inspecting the trunnion assembly or the tail rotor flapping stop, whichever is applicable, for yielding. If yielding is detected, the yoke assembly and trunnion assembly or flapping stop, whichever is applicable, must be replaced. That action was prompted by an accident involving a BHTI Model 205A-1 helicopter in which the yoke failed during flight. The Model 205A-1 helicopter is similar in design to the Model 212 helicopter. Investigation of the accident revealed that the yoke assembly service life may be reduced due to unforeseen static and dynamic

loading of the tail rotor. This condition, if not corrected, could lead to failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) No. 212-96-100, Revision A, dated May 18, 1998, which specifies inspections of the yoke assembly and trunnion assembly, and replacement of certain trunnion assemblies; and ASB 212-96-101, dated September 3, 1996, which specifies inspections of the yoke assembly, and installation of a tail rotor flapping stop.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 212 helicopters of the same type design, this AD requires, before further flight, reviewing historical records of the helicopter and the yoke assembly to detect any usage or event that may have imposed an excessive bending load on the yoke. If such usage or event occurred, before further flight, this AD requires replacing the yoke assembly with an airworthy yoke assembly that has zero-hours TIS, or that has passed an x-ray diffraction inspection in accordance with ASB 212-96-100, Revision A, dated May 18, 1998, or ASB 212-96-101, dated September 3, 1996, whichever is applicable, as well as installing an airworthy trunnion assembly or an airworthy flapping stop, depending on which part-numbered yoke assembly is installed. If no such usage or event has occurred, the yoke must be replaced within 180 calendar days. Thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident that may have imposed an excessive bending load on the yoke, this AD requires inspecting the trunnion assembly or the tail rotor flapping stop, whichever is applicable, for yielding. If yielding is detected, the yoke assembly and trunnion assembly or flapping stop, whichever is applicable, must be replaced. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter, and the yoke assembly may need to be replaced immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual

letters issued on May 19, 1998 to all known U.S. owners and operators of BHTI Model 212 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 250 helicopters of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per helicopter to accomplish the inspections and installations, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$6,637 for each yoke, \$1,028 for each trunnion assembly, and \$936 for each flapping stop per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,051,250 if both the yoke and the trunnion assembly are replaced in the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket No. 98-SW-20-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98-11-15 Bell Helicopter Textron Inc.:
Amendment 39-11010. Docket No. 98-SW-20-AD.

Applicability: Model 212 helicopters, with tail rotor yoke assembly, part number (P/N) 212-010-704-all dash numbers, P/N 212-010-744-all dash numbers, or P/N 212-011-702-all dash

numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail rotor yoke (yoke), loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review all historical records of the helicopter and the tail rotor yoke assembly (yoke assembly) for any static or dynamic incident history that could have imposed an excessive bending load on the yoke. If such a history exists, comply with paragraph (b) of this AD before further flight.

Note 2: Examples of excessive bending loads include exposure to high wind gusts (such as those from rotor wash or prop blast), improper ground handling (in which the tail rotor blade has been used as a hand hold), improper feathering bearing removal (in which the yoke is not properly supported when pressing out bearings), a static ground strike of some type (such as being struck by a vehicle), or an incident in which a damaged tail rotor blade was replaced due to a blade strike.

(b) Within the next 180 calendar days, remove the yoke assembly and replace it with an airworthy yoke assembly having zero hours time-in-service (TIS), or with an airworthy yoke assembly (regardless of TIS) that has passed an x-ray diffraction inspection in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 212-96-100, Revision A, dated May 18, 1998, or ASB 212-96-101, dated September 3, 1996, whichever is applicable. When the yoke assembly is replaced, for helicopters with a yoke assembly, P/N 212-011-702-all dash numbers, install an airworthy tail rotor flapping stop, P/N 212-011-713-103 and for helicopters with yoke assemblies, P/N 212-010-704-all dash numbers or P/N 212-010-744-all dash numbers, install an airworthy trunnion assembly, P/N 212-010-738-001. If any incident as described in paragraph (a) of this AD occurs after the effective date of this AD and prior to compliance with this paragraph, then compliance with this paragraph is required before further flight.

Note 3: Yoke assemblies that have passed an x-ray diffraction inspection at BHTI will

have the letters "FM" vibro-etched on them following the serial number.

(c) After accomplishing the requirements of paragraph (b) of this AD, thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident as described in paragraph (a) of this AD, inspect the trunnion assembly and replace the yoke assembly and trunnion assembly, if required, in accordance with Part III, Paragraph 1, of ASB 212-96-100, Revision A, dated May 18, 1998; or inspect the tail rotor flapping stop and replace the yoke assembly and flapping stop, if required, in accordance with Part III, Paragraphs 1, 2, and 3, of ASB 212-96-101, dated September 3, 1996, whichever is applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office, Rotorcraft Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

(f) The inspection shall be done in accordance with ASB 212-96-100, Revision A, dated May 18, 1998, or ASB 212-96-101, dated September 3, 1996, whichever is applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280-3391, fax (817) 280-6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 10, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98-11-15, issued May 19, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 13, 1999.

Eric Bries,

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

[FR Doc. 99-1351 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-SW-28-AD; Amendment 39-11009; AD 99-02-17]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B and 214B-1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214B and 214B-1 helicopters. This action requires a reduction of the never-exceed velocity (Vne) limitation until an inspection of the tail rotor yoke (yoke) assembly for fatigue damage and installation of a redesigned yoke flapping stop are accomplished. Recurring periodic and special inspections to detect occurrences of yoke overload are also required. This amendment is prompted by reports of inflight failures of yokes installed on civilian and military helicopters of similar type design. The actions specified in this AD are intended to prevent fatigue failure of the yoke that could result in loss of the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective February 10, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280-3391, fax (817) 280-6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Harry Edmiston, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5158, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to BHTI Model 214B and 214B-1 helicopters. This action requires, before further flight, reviewing the historical records for any incidents that may have imposed greater than normal bending loads on the tail rotor yoke, installing a placard on the instrument panel with a reduced airspeed limitation, and inserting the limitation into the Limitations section of the Rotorcraft Flight Manual (RFM). This action also requires, within 180 days, replacing the yoke assembly with a zero-hours time-in-service (TIS) airworthy yoke assembly, or one that has passed an x-ray diffraction inspection. A frangible tail rotor flapping stop/yield indicator, part number (P/N) 214-011-809-109, must also be installed. Further, this AD requires a repetitive 25 hours TIS inspection to detect tail rotor flapping stop damage due to a hard landing, sudden stoppage, or miscellaneous power on/off incidents, and an inspection after each incident in which damage due to a hard landing, sudden stoppage, or miscellaneous power on/off incidents may have occurred. This amendment is prompted by reports of inflight failures of yokes installed on civilian and military helicopters of similar type design. The actions specified in this AD are intended to prevent fatigue failure of the yoke that could result in loss of the tail rotor and subsequent loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron, Inc. Alert Service Bulletin No. 214-96-57, dated August 26, 1996, which specifies an immediate, temporary reduction in the maximum airspeed, installing a cockpit placard for this limitation, and incorporating a temporary RFM supplement until the yoke historical records are researched for previous damage history; until an x-ray diffraction inspection is performed on the yoke to detect fatigue damage; and until a frangible tail rotor flapping stop/yield indicator, P/N 214-011-809-109, is installed. A repetitive 25 hour TIS inspection to detect damaging tail rotor flapping stop contact due to a hard landing, sudden stoppage, or miscellaneous power on/off incidents has been added.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 214B and 214B-1 helicopters of the same type designs, this AD is being issued to prevent fatigue failure of the yoke that could result in loss of control of the tail rotor and subsequent loss of control of the helicopter. The actions are required to be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions stated in the AD are required prior to further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 10 helicopters will be affected by this proposed AD, that it will take approximately 9 work hours to accomplish the inspections and installations, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$21,844 for the yoke, and \$936 for the flapping stop, per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$233,200 to replace the yoke and flapping stop in the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-SW-28-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99-02-17 Bell Helicopter Textron, Inc.: Amendment 39-11009. Docket No. 98-SW-28-AD.

Applicability: Model 214B and 214B-1 helicopters, serial numbers 28001 and higher, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the tail rotor yoke (yoke) that could result in loss of the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review the historical records of the yoke assembly, part number (P/N) 214-011-802-105 or 214-011-802-111, for any recorded static or dynamic incidents that could have imposed a bending load on the yoke, but did not require replacing the yoke assembly; for example, an incident in which a damaged tail rotor blade was replaced due to a blade strike. If such a history exists, replace the yoke assembly with an airworthy yoke assembly.

(b) Before further flight, unless paragraph (c) of this AD has been accomplished previously:

(1) Install a Never Exceed Velocity (Vne) red line at 130 knots indicated airspeed (KIAS) on the pilot and copilot airspeed indicators using red tape or paint, and a slippage indicator on the instrument case and glass.

(2) Install a placard made of material that is not easily erased, disfigured, or obscured on the instrument panel in clear view of the pilot and copilot with the following words:

"Observe temporary Maximum Never Exceed (Vne) airspeed red line (marked at 130 knots indicated airspeed (KIAS)). Vne is the greater of 10 KIAS less than the value presented on the airspeed limits placard or 68 KIAS for each ambient condition."

(3) Insert the applicable Bell Helicopter Textron 214B or 214B-1 Temporary Revision for Airspeed Restriction, dated August 16, 1996, which is attached to Bell Helicopter Textron, Inc. Alert Service Bulletin No. 214-96-57, dated August 26, 1996 (ASB), into the Limitations section of the applicable Model

214B or 214B-1 Rotorcraft Flight Manual (RFM).

(c) Within 180 calendar days after the effective date of this AD:

(1) Remove the yoke assembly, P/N 214-011-802-105 or 214-011-802-111, and replace it with an airworthy yoke assembly with zero hours time-in-service (TIS), or an airworthy yoke (regardless of TIS) that has passed a one-time x-ray diffraction inspection in accordance with the ASB.

(2) Install an airworthy tail rotor flapping stop, P/N 214-011-809-109.

(3) After the requirements of paragraphs (c)(1) and (c)(2) of this AD are accomplished, remove the 130 KIAS redline from the pilot and copilot airspeed indicators, remove the Vne airspeed restriction placard, and remove the Bell Helicopter Textron 214B or 214B-1 Temporary Revision for Airspeed Restriction, dated August 16, 1996, from the RFM.

(d) After accomplishing paragraph (c) of this AD, thereafter, inspect the yoke assembly and tail rotor flapping stop at intervals not to exceed 25 hours TIS in accordance with Part III, Recurring 25 Hour Special Inspection and Conditional Inspection Requirement, of the ASB.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

(g) The recurring 25 hours TIS inspection shall be done in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin No. 214-96-57, dated August 26, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280-3391, fax (817) 280-6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on February 10, 1999.

Issued in Fort Worth, Texas, on January 13, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99-1350 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 98-SW-21-AD; Amendment 39-11011; AD 98-11-14]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A-1 and 205B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98-11-14 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) Model 205A-1 and 205B helicopters by individual letters. This AD requires inspecting the trunnion assembly or tail rotor flapping stop (flapping stop), whichever is applicable, installing a trunnion assembly or flapping stop, if necessary; and replacing the tail rotor yoke (yoke). This amendment is prompted by an accident involving a BHTI Model 205A-1 helicopter in which the yoke failed during flight. This condition, if not corrected, could lead to failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective February 10, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98-11-14, issued on May 19, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98-SW-21-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280-3391, fax (817) 280-6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest

Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Harry Edmiston, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5158, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION: On May 19, 1998, the FAA issued Priority Letter AD 98-11-14, applicable to BHTI Model 205A-1 and 205B helicopters, which requires, before further flight, reviewing historical records of the helicopter and yoke assembly to detect any usage or event that may have imposed an excessive bending load on the yoke. If such usage or event occurred, before further flight, the priority letter AD requires replacing the yoke assembly with an airworthy yoke assembly that has zero-hours time-in-service (TIS) or that has passed an x-ray diffraction inspection in accordance with BHTI's service bulletins, as well as installing an airworthy trunnion assembly or an airworthy flapping stop, depending on which part-numbered yoke assembly is installed. If no such usage or event has occurred, the yoke must be replaced within 180 calendar days. Thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident that may have imposed an excessive bending load on the yoke, this AD requires inspecting the trunnion assembly or the flapping stop, whichever is applicable, for yielding. If yielding is detected, replacing the yoke assembly and trunnion assembly or flapping stop, whichever is applicable, is required. That action was prompted by an accident involving a BHTI Model 205A-1 helicopter in which the yoke failed during flight. Investigation of the accident revealed that the yoke assembly service life may be reduced due to unforeseen static and dynamic loading of the tail rotor. This condition, if not corrected, could lead to failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) No. 205-96-68, Revision A, dated May 18, 1998, which specifies inspecting the yoke and trunnion assemblies, and replacing certain trunnion assemblies; and ASB 205-96-69 and ASB 205B-96-25, both dated September 3, 1996, which specify inspecting the yoke assembly and installing a flapping stop.

Since the unsafe condition described is likely to exist or develop on other BHTI Model 205A-1 and 205B helicopters of the same type design, the FAA issued Priority Letter AD 98-11-14 to prevent failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter. The AD requires, before further flight, reviewing historical records of the helicopter and yoke assembly to detect any usage or event that may have imposed an excessive bending load on the yoke. If such usage or event occurred, this AD requires, before further flight, replacing the yoke assembly with an airworthy yoke assembly that has zero-hours TIS, or that has passed an x-ray diffraction inspection in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 205-96-68, Revision A, dated May 18, 1998, or ASB 205-96-69 or ASB 205B-96-25, both dated September 3, 1996, whichever is applicable, as well as installing an airworthy trunnion assembly or an airworthy flapping stop, depending on which part-numbered yoke assembly is installed. If no such usage or event has occurred, the yoke must be replaced within 180 calendar days. Thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident that may have imposed an excessive bending load on the yoke, this AD requires inspecting the trunnion assembly or the flapping stop, whichever is applicable, for yielding. If yielding is detected, replacing the yoke assembly and trunnion assembly or flapping stop, whichever is applicable, is required. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect both the controllability and structural integrity of the helicopter. Therefore, the previously-stated actions are required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 19, 1998 to all known U.S. owners and operators of BHTI Model 205A-1 and 205B helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation

Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 495 helicopters of U.S. registry will be affected by this AD; that it will take approximately 9 work hours per helicopter to conduct the inspections, install the trunnion assembly or flapping stops, and replace the yoke; and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$1,028 for a trunnion assembly or \$936 for the flapping stops and \$6,637 for the yoke, per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$4,061,475 to replace both the trunnion assembly and the yoke in the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-SW-21-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

98-11-14 Bell Helicopter Textron, Inc.:

Amendment 39-11011. Docket No. 98-SW-21-AD.

Applicability: Model 205A-1 helicopters, with tail rotor yoke assembly, part number (P/N) 212-011-702-all dash numbers, or P/N 212-010-704-all dash numbers, or P/N 212-010-744-all dash numbers, and Model 205B helicopters, with tail rotor yoke assembly, P/N 212-011-702-all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail rotor yoke (yoke), loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review all historical records of the helicopter and the tail rotor yoke assembly (yoke assembly) for any static or dynamic incident history that could have imposed an excessive bending load on the yoke. If such a history exists, comply with paragraph (b) of this AD before further flight.

Note 2: Examples of excessive bending loads include exposure to high wind gusts (such as those from rotor wash or prop blast), improper ground handling (in which the tail rotor blade has been used as a hand hold), improper feathering bearing removal (in which the yoke is not properly supported when pressing out bearings), a static ground strike of some type (such as being struck by a vehicle), or an incident in which a damaged tail rotor blade was replaced due to a blade strike. An overload may also occur dynamically during a power-on or power-off sudden stoppage incident or hard landing.

(b) Within the next 180 calendar days, remove the yoke assembly and replace it with an airworthy yoke assembly having zero hours time-in-service (TIS), or with an airworthy yoke assembly (regardless of TIS) that has passed an x-ray diffraction inspection in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 205-96-68, Revision A, dated May 18, 1998, or ASB 205-96-69 or ASB 205B-96-25, both dated September 3, 1996, whichever is applicable. When the yoke assembly is replaced, for helicopters with a yoke assembly, P/N 212-011-702-all dash numbers, install an airworthy tail rotor flapping stop, P/N 212-011-713-103, and for helicopters with yoke assemblies, P/N 212-010-704-all dash numbers or P/N 212-010-744-all dash numbers, install an airworthy trunnion assembly, P/N 212-010-738-001. If any incident as described in paragraph (a) of this AD occurs after the effective date of this AD and prior to compliance with this paragraph, then compliance with this paragraph is required before further flight.

Note 3: Yoke assemblies that have passed an x-ray diffraction inspection at BHTI will have the letters "FM" vibro-etched on them following the serial number.

(c) After accomplishing the requirements of paragraph (b) of this AD, thereafter at

intervals not to exceed 25 hours TIS, or before further flight after any incident as described in paragraph (a) of this AD, inspect the trunnion assembly, and replace the yoke assembly and trunnion assembly, if required, in accordance with Part III, Paragraph 1, of ASB 205-96-68, Revision A, dated May 18, 1998; or inspect the flapping stop and replace the yoke assembly and flapping stop, if required, in accordance with Part III, Paragraphs 1, 2, and 3, of ASB 205-96-69 or ASB 205B-96-25, both dated September 3, 1996, whichever is applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office, Rotorcraft Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

(f) The repetitive inspections shall be done in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) No. 205-96-68, Revision A, dated May 18, 1998, which specifies inspections of the yoke and trunnion assemblies, and replacement of certain trunnion assemblies; and ASB 205-96-69 and ASB 205B-96-25, both dated September 3, 1996, which specify inspections of the yoke assembly and installation of a flapping stop. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280-3391, fax (817) 280-6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 10, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98-11-14, issued May 19, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 14, 1999.

Eric Bries,

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

[FR Doc. 99-1430 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-16-AD; Amendment 39-11008; AD 99-02-16]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company Models B300 and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Models B300 and B300C airplanes (commonly referred to as Beech Models B300 and B300C airplanes). This AD requires modifying the elevator trim tab actuators by incorporating a new elevator trim tab actuator assembly kit, replacing the elevator trim tab pushrod assembly, or modifying the elevator spar opening, whichever is applicable. Reports from operators of ice forming on the elevator trim tab actuators and jamming the trim tab control prompted this action. The actions specified by this AD are intended to prevent jamming of the elevator trim tab actuator caused by ice formations, which could result in loss of control of the airplane.

DATES: Effective March 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 625-7043. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-16-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Rd., Rm 100, Wichita, Kansas 67209; telephone: (316) 946-4124; facsimile: (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Models B300 and B300C airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 25, 1998 (63 FR 45187). The NPRM proposed to require modifying the elevator trim tab system. Accomplishment of the proposed action as specified in the NPRM would be in accordance with the Installation Instructions in Raytheon Kit Part Number (P/N) 130-5011-3 or Raytheon Kit P/N 130-5011-9, which contain Beech Aircraft Corporation Drawing 130-5011, Revision E, dated March 21, 1996, as referenced in the COMPLIANCE section in the ACCOMPLISHMENT INSTRUCTIONS, PART I, PART II, or PART III (whichever is applicable to the airplane serial number) of Raytheon Mandatory Service Bulletin (MSB) No. 2620, Issued: November, 1996.

The NPRM was the result of reports from operators of ice forming on the elevator trim tab actuators and jamming the trim tab control.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 132 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 30 workhours per airplane to accomplish this action, and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$5,000 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$897,600, or \$6,800 per airplane.

Raytheon has informed the FAA that parts have been distributed to equip 102 of the affected airplanes. The FAA will

presume that all 102 of the airplanes have the modification required by this AD incorporated. This will reduce the number of affected airplanes from 132 to 30 airplanes and will reduce the total cost impact on the U.S. operators from \$897,600, to \$204,000.

Regulatory Economic Analysis

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. This Act established "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation". To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a "significant economic impact on a substantial number of small entities." If the determination is that it will, the agency must prepare a Regulatory Flexibility Analysis as described in the Act. However, if after a review for a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the Act provides that the head of the agency may so certify and a Regulatory Flexibility Analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that this airworthiness directive (AD) will not have a significant economic impact on a substantial number of small entities.

Review To Determine the Need for a Regulatory Flexibility Analysis

An examination of the U. S. Registered Aircraft Database indicated that there are 132 Beech B300 and B300C aircraft registered in the United States. Ownership is held by a large number and wide variety of entities, many of them recognizable as major corporations or as financial institutions that are believed to be leasing the aircraft to unnamed entities. Many of the small entities affected by this AD are believed to be in either Standard Industrial Classification (SIC) 4522, "Air

Transportation, Nonscheduled" or SIC 4581 "Airports, Flying Fields, and Airport Terminal Services." Under the Small Business Administration (SBA) *Table of Size Standards*, March 1, 1996, an entity in SIC 4522 would be a small entity if it has 1,500 or fewer employees and an entity in SIC 4581 would be a small entity if it has annual sales of \$5 million or less. Thus, this AD is believed likely to affect a substantial number of small entities.

The cost that will be incurred in order to bring an airplane into compliance

with this AD has been estimated to be approximately \$5,000 for parts and 30 hours of labor at \$60 per hour for installation, a total of approximately \$6,800 per airplane. All these costs are incurred at the time of installation. It is assumed that the modification of the elevator tab actuator mechanism and other associated modifications cause no significant changes in requirements for subsequent inspection and recordkeeping.

It has been estimated that the modification has already been

accomplished on the majority of the aircraft covered by this AD and that only 30 airplanes do not have the modification incorporated. This implies that the total cost arising from this AD will be approximately \$200,000 (\$6,800 x 30 = \$204,000).

A reasonable range of annualized of costs arising from this AD is suggested in the following table:

	Cost of capital (percent per year)	Remaining life of aircraft (years)	Annualized cost
10		20	\$799
15		20	1,086
10		10	1,107
15		10	1,355

The average annualized cost per airplane is estimated to be in the range of approximately \$800 to \$1,400 (consistent with 10 to 20 years of remaining life and a cost of capital of 10 to 15 percent per year). Market values for the affected airplanes are believed to be on the order of \$2,000,000 or more, with some variation depending on the airplane's age, condition, and installed equipment. Costs for the required modifications will be in the order of one-third of one percent ($(\$6,800 / \$2,000,000) \times 100\% = 0.34\%$) of the market value of an affected airplane.

Annual operating costs are estimated to include about \$46,000 for fuel and at least \$11,000 for crew. According to the *General Aviation and Air Taxi Activity and Avionics Survey, Calendar Year 1995*, FAA-APO-97-4, these aircraft fly an average of about 270 hours per year (Table 2.2). Average fuel consumption for a two-engine turboprop seating 1 through 12 passengers is about 85 gallons per hour (Table 5.1). Recent prices for Jet A fuel are \$2.00 per gallon (at <http://www.fillupflyer.com> in May 1998). This implies average annual fuel costs of approximately \$46,000 (270 hours x 85 gallons/hour x \$2/gallon = \$45,900). Two crewmembers paid a nominal \$20 per hour will cost at least \$11,000 (2 x 270 hours x \$20 = \$10,800). Annualized capital costs for the aircraft will be in the range of \$235,000 (capital recovery factor for 20 years at 10% x \$2 million = \$234,919) to \$400,000 (capital recovery factor for 10 years at 15% x \$2 million = \$398,504). Costs for maintenance, insurance, and parking will further add to the total cost for owning and operating the aircraft,

bringing the annual totals to the range of \$300,000 to \$500,000. In this context, this AD's implied annualized costs in the range of \$800 to \$1,400 are less than three tenths of one percent of the annualized cost of owning and operating the aircraft, a level that is not believed to have a significant economic impact on the owner/operator of such aircraft.

On the basis of these considerations, the FAA has determined that, although a substantial number of small entities is likely to be affected by this proposed AD, there will not be a significant economic impact on these entities. Based on the above analysis and findings, the FAA has determined that this AD will not have significant economic impact on a substantial number of small entities.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

\$ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99-02-16 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by Beech Aircraft Corporation): Amendment 39-11008; Docket No. 97-CE-16-AD.

Applicability: The following models and serial number (S/N) airplanes, certificated in any category:

Models	Serial numbers
B300	FL-1 through FL-23, FL-25 through FL134, FL-136, and FL-137.
B300C	FM-1 through FM-9, and FN-1.

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

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent jamming of the elevator trim tab actuator caused by ice formations, which could cause loss of control of the airplane, accomplish the following:

(a) Modify the elevator trim tab system in accordance with the Installation Instructions in Raytheon Kit Part Number (P/N) 130-5011-3 or Raytheon Kit P/N 130-5011-9, which contain Beech Aircraft Corporation Drawing 130-5011, Revision E, dated March 21, 1996, as referenced in the COMPLIANCE section in the ACCOMPLISHMENT INSTRUCTIONS, PART I, PART II, or PART III (whichever is applicable to the airplane serial number) of Raytheon Mandatory Service Bulletin (MSB) No. 2620, Issued: November, 1996.

Note 2: The MATERIALS section in Raytheon MSB No. 2620, Issued: November, 1996, provides a breakdown of the airplane Models and serial numbers affected by PART I, PART II, or PART III of the ACCOMPLISHMENT INSTRUCTIONS section.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), Room 100, 1801 Airport Rd., Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(d) The modification required by this AD shall be done in accordance with the Installation Instructions in Raytheon Kit Part Number (P/N) 130-5011-3 or Raytheon Kit

P/N 130-5011-9, as referenced in Raytheon Mandatory Service Bulletin No. 2620, Issued: November, 1996. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on March 12, 1999. Issued in Kansas City, Missouri, on January 13, 1999.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-1446 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-60]

Establishment of Class E Airspace; Bellevue, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Bellevue, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 052° helicopter point in space approach has been developed for Bellevue Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Bellevue, OH, in order to include the point in space approach serving Bellevue Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71

to establish Class E airspace at Bellevue, OH (63 FR 63623). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Bellevue, OH, to accommodate aircraft executing the proposed GPS SIAP 052° helicopter point in space approach at Bellevue Hospital Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Bellevue, OH [New]

Bellevue Hospital, OH
Point in Space Coordinates
(Lat. 41°16'33" N., long. 82°51'10" W)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Bellevue Hospital, excluding the airspace within the Sandusky, OH, and Norwalk, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1740 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 98–AGL–59]

Modification of Class E Airspace; Sandusky, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Sandusky, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 097° helicopter point in space approach has been developed for Providence

Hospital Heliport and Firelands Community Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Sandusky, OH, in order to include the point in space approach serving Providence Hospital Heliport and Fireland Community Hospital Heliport.
EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:**History**

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Sandusky, OH (63 FR 63624). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Sandusky, OH, to accommodate aircraft executing the proposed GPS SIAP 097° helicopter point in space approach at Providence Hospital Heliport and Firelands Community Hospital Heliport by modifying existing controlled airspace for the heliports. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1)

is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Sandusky, OH [Revised]

Sandusky, Griffing Sandusky Airport, OH
(Lat. 41° 26' 00" N., long. 82° 39' 08" W)
Firelands Community Hospital, OH
Providence Hospital, OH
Point In Space Coordinates
(Lat. 41° 26' 32" N., long. 82° 43' 29" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Griffing Sandusky Airport, and within a 6.0-mile radius of the Point in Space serving Firelands Community Hospital and Providence Hospital, excluding the airspace within the Port Clinton, OH, and Norwalk, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99-1739 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-58]

Modification of Class E Airspace; Norwalk, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Norwalk, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 037° helicopter point in space approach has been developed for Fisher-Titus Medical Center Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Norwalk, OH, in order to include the point in space approach serving Fisher-Titus Medical Center Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Norwalk, OH (63 FR 63625). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September

10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Norwalk, OH, to accommodate aircraft executing the proposed GPS SIAP 037° helicopter point in space approach at Fisher-Titus Medical Center Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Norwalk, OH [Revised]

Norwalk-Huron County Airport, OH
(Lat. 41°14'41" N., long. 82°33'04" W)

Fisher-Titus Medical Center, OH
Point In Space Coordinates
(Lat. 41°12'53" N., long. 82°36'37" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Norwalk-Huron County Airport and within 2.5 miles each side of the 338° bearing from the airport extending from the 6.4-mile radius to 8.8 miles northwest of the airport, and within a 6.0-mile radius of the Point in Space serving Fisher-Titus Medical Center, excluding that airspace within the Mansfield, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99-1738 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-57]

Modification of Class E Airspace; Fostoria, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Fremont, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 099° helicopter point in space approach has been developed for Fostoria Community Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Fostoria, OH, in order to include the point in space approach serving Fostoria Community Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT:

Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Fostoria, OH (63 FR 63622). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 to FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Fostoria, OH, to accommodate aircraft executing the proposed GPS SIAP 099° helicopter point in space approach at Fostoria Community Hospital Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Fostoria, OH [Revised]

Fostoria Metropolitan Airport, OH
(Lat. 41° 11' 27"N., long. 83° 23' 40"W)
Fostoria Community Hospital, OH
Point In Space Coordinates
(Lat. 41° 10' 08"N., long. 83° 26' 31"W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Fostoria Metropolitan Airport, and within a 6.0-mile radius of the Point in Space serving Fostoria Community Hospital, excluding the airspace within the Tiffin, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1737 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–55]

Modification of Class E Airspace; Monroe, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Monroe, MI. A Global Positioning System (GPS) Standard

Instrument Approach Procedure (SIAP) 210° helicopter point in space approach has been developed for Mercy Memorial Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Monroe, MI, in order to include the point in space approach serving Mercy Memorial Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Monroe, MI (63 FR 63626). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Monroe, MI, to accommodate aircraft executing the proposed GPS SIAP 210° helicopter point in space approach at Mercy Memorial Hospital Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1)

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Monroe, MI [Revised]

Monroe, Custer Airport, MI

(Lat. 41°56'24" N., long. 83°26'05" W)

Mercy Memorial Hospital, MI
Point in Space Coordinates

(Lat. 41°56'05" N., long. 83°23'34" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Custer Airport, and within a 6.0-mile radius of the Point in Space serving Mercy Memorial Hospital, excluding that airspace within the Detroit, MI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1736 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–12–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–2]

Amendment to Class E Airspace; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Grand Island, Central Nebraska Regional Airport, NE. A review of the Class E airspace area for Grand Island, Central Nebraska Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, the Instrument Landing System (ILS) and coordinates are added and included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), add the ILS and coordinates, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–2, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal

Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace area at Grand Island, NE. A review of the Class E airspace for Grand Island, Central Nebraska Regional Airport, NE, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This document adds the Central Nebraska Regional Airport ILS and coordinates. The amendment at Grand Island, Central Nebraska Regional Airport, NE, will provide additional controlled airspace for aircraft operating under IFR, add the ILS and coordinates, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA

does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-ACE-2." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and

unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Grand Island, NE [Revised]

Grand Island, Central Nebraska Regional Airport, NE

(Lat 40°58'03" N., long. 98°18'31" W.)

Grand Island VORTAC

(Lat. 40°59'03" N., long. 98°18'53" W.)

Grand Island, Central Nebraska Regional Airport ILS

(Lat. 40°58'55" N., long. 98°18'53" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Central Nebraska Regional Airport and within 4 miles each side of the Grand Island ILS Localizer course extending from the 6.6-mile radius to 8.7 miles south of the airport and within 4 miles northeast and 6 miles southwest of the 294° radial of the Grand Island VORTAC extending from the 6.6-mile radius to 16 miles northwest of the VORTAC and within 4 miles east and 6 miles west of the 360° radial of the Grand

Island VORTAC extending from the 6.6-mile radius to 16 miles north of the VORTAC.

* * * * *

Issued in Kansas City, MO, on January 8, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–1560 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–15]

Amendment of Class E Airspace; Riverton, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The direct final rule published on October 30, 1998 (63 FR 58299) changed the Riverton, WY, Class E surface airspace legal description from part-time to continuous. The FAA commissioned an Automated Surface Observing System (ASOS) at the Riverton Regional Airport which makes the airport eligible for continuous Class E surface airspace.

EFFECTIVE DATE: The direct final rule published at 63 FR 58299 is effective 0901 UTC, 28 January, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the **Federal Register** on October 30, 1998 (63 FR 58299). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The comment period ended November 30, 1998. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment or a written notice of intent to submit such an adverse comment were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Seattle, Washington on January 13, 1999.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99-1559 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ACE-1]

Amendment to Class E Airspace; Perryville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Perryville Municipal Airport, Perryville, MO. A review of the Class E airspace area for Perryville Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The Airport Reference Point (ARP) is amended and included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), amend the ARP, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE-520, Federal Aviation Administration, Docket Number 99-ACE-1, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE-520C, Federal Aviation Administration, 601 East 12th

Street, Kansas City, MO 64106; telephone: (816) 426-3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Perryville, MO. A review of the Class E airspace for Perryville Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Perryville Municipal Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, amend the APR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be

published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-ACE-1." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive

Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

\$ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Perryville, MO [Revised]

Perryville Municipal Airport, MO
(Lat. 37°52'07" N., long. 89°51'44" W.)
Farmington VORTAC, MO
(Lat. 37°40'24" N., long. 90°14'03" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Perryville Municipal Airport and within 1.8 miles each side of the 057° radial of the Farmington VORTAC extending from the 6.6-mile radius to 8.2 miles southwest of the airport.

Issued in Kansas City, MO, on January 8, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.
[FR Doc. 99–1558 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANE–95]

Amendment to Class E Airspace; Rockland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects the description of revised Class E airspace at Rockland, ME (KRKD) published in the **Federal Register** on December 24, 1998 (63 FR 71218). That action was necessary due to the relocation of the Sprucehead Non-Directional Beacon (NDB) and to provide adequate controlled airspace for two new standard instrument approaches to the Rockland, Knox County Regional Airport.

DATES: Effective 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 23, 1999.

ADDRESSES: Send comments on the rule to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 98–ANE–95, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: "9-ne-airspace@faa.gov" Comments sent electronically must indicate Docket 98–ANE–95 in the subject line.

The official docket file may be examined in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7050; fax (781) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Acting Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT:

David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7523; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION:

On December 24, 1998, the FAA published in the **Federal Register** a direct final rule revising the Class E airspace at Rockland, ME (KRKD) due to

relocation of the Sprucehead Non-Directional Beacon (NDB) and to provide adequate controlled airspace for two new standard instrument approaches to the Rockland, Knox County Regional Airport (63 FR 71218). Since publication of that direct final rule, the FAA has determined that longitude and latitude coordinates of the Rockland, Knox County Regional Airport must be corrected slightly to reflect the results of a survey taken in February 1998, and that the revised description of Class E airspace at Rockland, ME need not reference the Sprucehead NDB because the airspace is now based solely on the airport location. This action makes those corrections to the revised airspace description.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the amendment to Class E airspace at Rockland, ME as published in the **Federal Register** on December 24, 1998 (63 FR 71218), **Federal Register** document 98–34166: page 71219, column 1; and the description in FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1; are corrected to read as follows:

ANE ME E5 Rockland, ME [Corrected]

Rockland, Knox County Regional Airport, ME
(Lat. 44°03'36"N, long. 69°05'57"W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Knox County Regional Airport.

Issued in Burlington, MA, on January 11, 1999.

Bill G. Peacock,

Manager, Air Traffic Division, New England Region.

[FR Doc. 99–1556 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–27]

Amendment of Class E Airspace; Golden Triangle Regional Airport, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment modifies the Golden Triangle Regional Airport Class E surface area airspace description by eliminating the specified 2,800 feet MSL

upper limit within 4.1-miles radius of the Golden Triangle Regional Airport. By definition, Class E surface area airspace extends upward from the surface to the overlying controlled airspace and should be without artificially specified upper limits, such as that improperly contained in the current description. The Class E airspace overlying the Golden Triangle Regional Airport extends upward from 700 feet above the surface of the earth. Therefore, the surface area airspace within a 4.1-mile radius of the Golden Triangle Regional Airport extends up to, but not including, 700 feet above the surface of the earth. This action corrects that technical discrepancy.

DATES: EFFECTIVE DATE: 0901 UTC, March 25, 1999.

Comments Date: Comments must be received on or before February 25, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98-ASO-27, Manager, Airspace Branch, ASO-520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves eliminating the specified 2,800 feet MSL upper limit within a 4.1-mile radius of the Golden Triangle Regional Airport, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking procedures to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the description of the Class E surface area airspace for the Golden Triangle Regional Airport by eliminating the 2,800 feet MSL upper limit within a 4.1-mile radius of the Golden Triangle Regional Airport. Class E airspace designations for surface areas are published in paragraph 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Since this action only makes a technical amendment to the Class E surface area description and should have no impact on the users of the airspace in the vicinity of the Golden Triangle Regional Airport the notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points,

dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO MS E2 Columbus, MS [Revised]

Golden Triangle Regional Airport
(Lat. 33°27'01" N, long. 88°35'29" W)

Within a 4.1-mile radius of Golden Triangle Regional Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia on January 11, 1999.

Nancy B. Shelton,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 99-1743 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135, and 145

[Docket No. FAA-1998-4654; Amendment No. SFAR 36-7]

RIN 2120-AG64

Special Federal Aviation Regulation No. 36, Development of Major Repair Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; corrections.

SUMMARY Federal Aviation Administration published a final rule in the **Federal Register** (64 FR 958) on January 6, 1999, that amends and extends Special Federal Aviation Regulation (SFAR) No. 36, which provides that holders of authorized repair station or aircraft operating certificates may approve aircraft products or articles for return to service after accomplishing major repairs using self-developed repair data that have not been directly approved by the FAA. This document corrects an error in the heading and adds the date of issuance to the final rule.

FOR FURTHER INFORMATION CONTACT: Carol Martineau, Policy and Procedures Branch, Aircraft Engineering division, AIR-110, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267-9568.

Correction

In rule FR Doc. 99-128 beginning on page 958 in the **Federal Register** issue of Wednesday, January 6, 1999, make the following corrections:

1. On page 958, in the first column, in the heading section, on line 8, remove the words "Notice No. 98-15".

2. On page 961, in the third column, on the line before the signature block, insert a line containing the words "Issued in Washington, DC, on December 30, 1998".

Issued in Washington, DC, on January 20, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99-1742 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 301**

[TD 8808]

RIN 1545-AW23

Modifications and Additions to the Unified Partnership Audit Procedures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The unified partnership audit procedures generally provide administrative rules for the auditing of partnership items at the partnership level. These regulations modify the existing unified partnership audit procedures to comply with the Taxpayer Relief Act of 1997 (1997 Act) and the Internal Revenue Service Restructuring and Reform Act of 1998 (1998 Act), and add new regulations to administer the new unified partnership audit provisions added by the 1997 Act. In general, the text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 26, 1999.

FOR FURTHER INFORMATION CONTACT:

Robert G. Honigman, (202) 622-3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains temporary amendments to the Procedure and Administration Regulations (26 CFR Part 301) relating to the unified partnership audit procedures found in sections 6221 through 6233 of the Internal Revenue Code (Code) and final regulations pertaining to the applicable dates of § 301.6231(a)(7)-1T(p)(2) and § 301.6231(a)(7)-1T(r)(1). Sections 1231 through 1243 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788, modified some of the existing procedures and added certain new rules. Section 3507 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685, modified section 6231. This document modifies existing regulations that, because of the 1997 Act or the 1998 Act, no longer reflect current law.

Explanation of Provisions*Penalties Determined at the Partnership Level*

Before the 1997 Act, the Internal Revenue Service (Service) could impose penalties on a partner only through the application of the deficiency procedures after the completion of a partnership level proceeding. Forcing the Service to open deficiency proceedings against the individual partners was inconsistent with the efficiency goal of the unified partnership audit rules. The 1997 Act cured this problem by providing that, for partnerships under audit for taxable years ending after August 5, 1997, partnership level proceedings include the determination of applicable penalties at the partnership level. Partners now may raise any partner level defenses to the imposition of penalties only in a subsequent refund action.

Consistent with these statutory changes, the temporary regulations mandate that the partnership's penalty defenses are to be resolved during the partnership proceeding. Nevertheless, any individual defenses that a partner may have to the imposition of a penalty may be brought by the partner in a refund action subsequent to the partnership level determination. In order to minimize the burden on individual partners to defend themselves by bringing their own refund suits, the temporary regulations incorporate a large number of defenses at the partnership level. The majority of a partner's defenses to the imposition of penalties are not specific to a particular partner, but can be determined by

reference to the activities of the partnership. The applicability of these defenses may be resolved at the partnership level during the partnership proceeding. In addition, the temporary regulations modify the computational adjustment rules to allow the Service to assess penalties under those procedures.

Partial Settlements

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is one year after the date that the items became nonpartnership items. Section 6231(b)(1)(C) provides that the partnership items of a partner for a partnership taxable year become nonpartnership items as of the date the partner enters into a settlement agreement with the Service with respect to such items. In some audits, however, the taxpayer and the Service will enter into a settlement agreement regarding some, but not all, of the taxpayer's partnership items. The 1997 Act added a special rule for these partial settlement agreements in section 6229(f)(2), providing that the period for assessing any tax attributable to the settled items is determined as if the partial settlement had not been executed. Thus, the limitations period applicable to the last partnership item to be resolved for the partnership's taxable year under audit is controlling with respect to all disputed partnership items (including settled items) for such partnership taxable year.

The temporary regulations state that the one year period for assessing partnership items that convert to nonpartnership items applicable to settlement agreements under section 6231(b)(1)(C) does not apply to partial settlement agreements under section 6229(f)(2). Moreover, the temporary regulations clarify that the partner remains subject to the unified audit procedures regarding the nonsettled items.

Tax Matters Partner as a Debtor in Bankruptcy

Section 6229(b)(1)(B) provides that the statute of limitations under section 6229 is extended with respect to all partners in the partnership by an agreement entered into between the tax matters partner (TMP) and the Service. Treas. Reg. § 301.6231(a)(7)-1(l)(1)(iv) (1996) and Temp. Treas. Reg. § 301.6231(c)-7T(a) (1987), however, provide that upon the filing of a petition naming a partner as a debtor in a

bankruptcy proceeding, the partner/debtor's partnership items convert to nonpartnership items, and if the partner/debtor was the TMP, that status terminates. These rules were promulgated to avoid the complications that the automatic stay provision contained in 11 U.S.C. 362(a)(8) would have on a unified partnership audit. As a result, if a TMP executed a consent to extend the statute of limitations during a period when the TMP was a debtor in a bankruptcy proceeding, the consent would not be binding on the other partners. Under the regulations, the person signing the agreement was ineligible to act as the TMP and extend the statute as to all partners.

To resolve the uncertainty under prior law in the situation where a TMP executes an agreement extending the statute of limitations as to all partners while, unknown to the Service, the TMP is a debtor in a bankruptcy proceeding, the 1997 Act provides that the Service may rely on the executed statute extension agreement unless it is notified of the TMP's bankruptcy proceeding. If the Service is not notified of the TMP's bankruptcy proceeding, statute extensions granted by the TMP are binding on all partners in the partnership.

The temporary regulations provide a mechanism for the TMP, or other partners, to provide notice to the Service that the TMP is a debtor in a bankruptcy proceeding and therefore is ineligible to serve as TMP and extend the statute under section 6229. This mechanism is derived from existing regulations that provide guidance on how to notify the Service of information concerning a partnership's partners.

Small Partnership Exception

The 1997 Act amended the small partnership exception to the unified partnership audit procedures found in section 6231. Formerly, in order to qualify for the small partnership exception, the partnership had to have 10 or fewer partners at all times during the tax year, each of whom was a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item was the same as that partner's share of every other partnership item. The 1997 Act amended the small partnership exception by allowing partnerships to qualify for the exception even if they have a C corporation for a partner or specially allocate some partnership items. The temporary regulations modify the existing regulations interpreting the small partnership exception to take account of this change in the law.

Effective Date

These final and temporary regulations are applicable January 26, 1999. In accordance with section 7805(e)(2), the temporary regulations contained herein shall expire January 25, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these final and temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting information. The principal authors of these temporary regulations are Robert G. Honigman, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), and William A. Heard, Office of the Assistant Chief Counsel (Field Service). However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Amend § 301.6221-1T by:

1. Redesignating paragraph (c) as paragraph (e).
2. Adding new paragraphs (c) and (d). The additions read as follows:

§ 301.6221-1T Tax treatment determined at partnership level (temporary).

* * * * *

(c) *Penalties determined at partnership level (partnership taxable years ending after August 5, 1997).* Any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, shall be determined at the partnership level. Partner level defenses to such items can only be asserted through refund actions following assessment and payment. Assessment of any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item shall be made based on partnership level determinations. Partnership level determinations include all the legal and factual determinations that underlie the determination of any penalty, addition to tax, or additional amount, other than partner level defenses specified in paragraph (d) of this section.

(d) *Partner level defenses.* Partner level defenses to any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, may not be asserted in the partnership level proceeding, but may be asserted through separate refund actions following assessment and payment. See section 6230(c)(4). Partner level defenses are limited to those that are personal to the partner or are dependant upon the partner's separate return, and cannot be determined at the partnership level. Examples of these determinations are: whether any applicable threshold underpayment of tax has been met with respect to the partner or whether the partner has met the criteria of section 6664(b)(penalties applicable only where return is filed), or section 6664(c)(1)(reasonable cause exception) subject to partnership level determinations as to the applicability of section 6664(c)(2).

* * * * *

Par. 3. Amend § 301.6223(c)-1T by adding a sentence to the end of paragraph (c) to read as follows:

§ 301.6223(c)-1T Additional information regarding partners furnished to the Service (temporary).

* * * * *

(c) * * * Furthermore, reference to a prior general notification to the Service that a partner who would otherwise be the tax matters partner is a debtor in a bankruptcy proceeding or has had a receiver appointed for him in a receivership proceeding is not sufficient unless a copy of the notification document referred to is attached to the statement.

* * * * *

Par. 4. Amend § 301.6224(c)-3T by:

1. Revising the section heading.
2. Revising paragraphs (b), (c)(3)(ii), and (d), *Example (1)*.

The revisions read as follows:

§ 301.6224(c)-3T Consistent settlement terms (temporary).

* * * * *

(b) *Requirements for consistent settlement terms*—(1) *In general.* Consistent settlement terms are those based on the same determinations with respect to partnership items. However, consistent settlement terms also may include partnership level determinations of any penalty, addition to tax, or additional amount that relates to partnership items. Settlements with respect to partnership items shall be self-contained; thus, a concession by one party with respect to a partnership item may not be based upon a concession by another party with respect to any item that is not a partnership item other than any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. Consistent agreements, whether comprehensive or partial, must be identical to the original settlement (that is, the settlement upon which the offered settlement terms are based). A consistent agreement must mirror the original settlement and may not be limited to selected items from the original settlement. Once a partner has settled a partnership item, or penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, that partner may not subsequently request settlement terms consistent with a settlement that contains the previously settled item. The requirement for consistent settlement terms applies only if—

(i) The items were partnership items (and any related penalty, addition to tax, or additional amount) for the partner entering into the original settlement immediately before the original settlement; and

(ii) The items are partnership items (and any related penalty, addition to tax, or additional amount) for the partner requesting the consistent settlement at the time the partner files the request.

(2) *Effect of consistent agreement.* Consistent settlement terms are reflected in a consistent agreement. A consistent agreement is not a settlement agreement which gives rise to further consistent settlement rights because it is required to be given without volitional agreement of the Secretary. Therefore, a consistent agreement required to be offered to a requesting taxpayer is not a settlement agreement under section 6224(c)(2) of the Internal Revenue Code, or paragraph (c)(3) of this section which starts a new period for requesting consistent settlement terms. For all other purposes

of the Internal Revenue Code, however, (e.g., binding effect under section 6224(c)(1), and conversion to nonpartnership items under section 6231(b)(1)(C)) a consistent agreement is treated as a settlement agreement.

(c) * * *

(3) * * *

(ii) The 60th day after the day on which the settlement agreement was entered into.

(d) * * *

Example (1). The Service seeks to disallow a \$100,000 loss reported by Partnership P. The Service agrees to a settlement with X, a partner in P, in which the Service allows 60 percent of the loss, accepts the treatment of all other partnership items on the partnership return, and imposes a penalty for negligence related to the loss disallowance. Partner Y, which owns a 10 percent interest in the partnership, requests settlement terms which are consistent with the settlement made between X and the Service. The items are partnership items (and a related penalty) for X immediately before X enters into the settlement agreement and are partnership items (and a related penalty) for Y at the time of the request. The Service must offer Y settlement terms allowing a \$6,000 loss, a negligence penalty on the \$4,000 disallowance, and otherwise reflecting the treatment of partnership items on the partnership return.

* * * * *

Par. 5. Add § 301.6229(b)-2T to read as follows:

§ 301.6229(b)-2T Special rule with respect to debtors in Title 11 cases (temporary).

(a) *In general.* Notwithstanding any other law or rule of law, if an agreement is entered into under section 6229(b)(1)(B), and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under Title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Service has been notified of the bankruptcy proceeding in accordance with paragraph (b) of this section.

(b) *Procedures for notifying the Service of a partner's bankruptcy proceeding.* (1) The Service shall be notified of the bankruptcy proceeding of the tax matters partner in accordance with the procedures set forth in § 301.6223(c)-1T.

(2) In addition to the information specified in § 301.6223(c)-1T, notification that a person is (or was) a debtor in a bankruptcy proceeding shall include the date the bankruptcy proceeding was filed, the name and address of the court in which the bankruptcy proceeding exists (or took place), the caption of the bankruptcy

proceeding (including the docket number or other identification number used by the court), and the status of the proceeding as of the date of notification.

Par. 6. Add § 301.6229(f)-1T to read as follows:

§ 301.6229(f)-1T Special rule for partial settlement agreements (temporary).

(a) *In general.* If a partner enters into a settlement agreement with the Service with respect to the treatment of some of the partnership items in dispute for a partnership taxable year, but other partnership items for such year remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.

(b) *Other items remaining in dispute.* Pursuant to section 6226(c), a partner is a party to a partnership level judicial proceeding with respect to partnership items. When a partner settles partnership items, the settled partnership items convert to nonpartnership items under section 6231(b)(1)(C) and will not be subject to any future or pending partnership level proceeding pursuant to section 6226(d)(1). The remaining unsettled partnership items, however, will remain subject to determination under partnership level administrative and judicial procedures. Consequently, any remaining unsettled items will be deemed to remain in dispute. Thus, the period for assessing settled items will be governed by the period for assessing the remaining unsettled items.

Par. 7. Amend § 301.6231(a)(1)-1T by:

1. Revising the first two sentences of paragraph (a)(1).
2. Removing paragraph (a)(3).
3. Redesignating paragraph (a)(4) as paragraph (a)(3).

The revision reads as follows:

§ 301.6231(a)(1)-1T Exception for small partnerships (temporary).

(a) * * *

(1) “10 or fewer.” The “10 or fewer” limitation described in section 6231(a)(1)(B)(i) is applied to the number of natural persons (other than nonresident aliens), C corporations, and estates of deceased partners that were partners at any one time during the partnership taxable year. Thus, for example, a partnership that at no time during the taxable year had more than 10 partners may be treated as a small partnership even if, because of transfers of interests in the partnership, 11 or more natural persons, C corporations, or estates of deceased partners owned interests in the partnership for some portion of the taxable year. * * *

* * * * *

- Par. 8.** Amend § 301.6231(a)(6)–1T by:
1. Revising paragraph (a).
 2. Removing paragraph (c).
- The revision reads as follows:

§ 301.6231(a)(6)–1T Computational adjustments (temporary).

(a) *In general.* A change in the tax liability of a partner to properly reflect the treatment of a partnership item under subchapter C of chapter 63 of the Internal Revenue Code is made through a computational adjustment. A computational adjustment includes a change in tax liability that reflects a change in an affected item where that change is necessary to properly reflect the treatment of a partnership item, or any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. However, if a change in a partner's tax liability cannot be made without making one or more partner level determinations, that portion of the change in tax liability attributable to the partner level determinations shall be made under the provisions of subchapter B of chapter 63 of the Internal Revenue Code (relating to deficiency procedures), except for any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.

(1) Changes in a partner's tax liability with respect to affected items that do not require partner level determinations (such as the threshold amount of medical deductions under section 213 that changes as the result of determinations made at the partnership level) are computational adjustments that are directly assessed. When making computational adjustments, the Service may assume that amounts the partner reported on the partner's individual return include all amounts reported to the partner by the partnership, absent contrary notice to the Service (for example, a "Notice of Inconsistent Treatment"). Such an assumption by the Service does not constitute a partner level determination. Moreover, substituting redetermined partnership items for the partner's previously reported partnership items (including partnership items included in carryover amounts) does not constitute a partner level determination where the Service otherwise accepts all nonpartnership items (including, for example, nonpartnership item components of carryover amounts) as reported.

(2) Changes in a partner's tax liability with respect to affected items that require partner level determinations (such as a partner's at-risk amount to the extent it depends upon the source from which the partner obtained the funds

that the partner contributed to the partnership) are computational adjustments subject to deficiency procedures. Nevertheless, any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item may be directly assessed following a partnership proceeding, based on determinations in that proceeding, regardless of whether partner level determinations are required.

* * * * *

Par. 9. Amend § 301.6231(a)(7)–1 by adding a sentence at the end of paragraphs (p)(2) and (r)(1) to read as follows:

§ 301.6231(a)(7)–1 Designation or selection of tax matters partner.

* * * * *

(p) * * *
(2) * * * For regulations applicable on or after January 26, 1999 (reflecting statutory changes made effective July 22, 1998) and before January 25, 2002, see § 301.6231(a)(7)–1T(p)(2).

* * * * *

(r) * * * (1) * * * For regulations applicable on or after January 26, 1999 (reflecting statutory changes made effective July 22, 1998) and before January 25, 2002, see § 301.6231(a)(7)–1T(r)(1).

* * * * *

Par. 10. Add § 301.6231(a)(7)–1T to read as follows:

§ 301.6231(a)(7)–1T Designation or selection of tax matters partner (temporary).

(a) through (p)(1) [Reserved]. For further guidance, see § 301.6231(a)(7)–1(a) through (p)(1).

(p)(2) *When each general partner is deemed to have no profits interest in the partnership.* If it is impracticable under § 301.6231(a)(7)–1(o)(2) to apply the largest-profits-interest rule of § 301.6231(a)(7)–1(m)(2), the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in § 301.6231(a)(7)–1(q). The Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a), effective as of the date specified in the notice. For regulations applicable before July 22, 1998, see § 301.6231(a)(7)–1(p)(2).

(p)(3) through (q) [Reserved]. For further guidance, see § 301.6231(a)(7)–1(p)(3) through (q).

(r) *Notification of partnership.*—(1) *In general.* If the Commissioner selects a tax matters partner under the provisions of § 301.6231(a)(7)–1(p)(1) or (3)(i), the

Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a), effective as of the date specified in the notice. For regulations applicable before July 22, 1998, see § 301.6231(a)(7)–1(r)(1).

(r)(2) [Reserved]. For further guidance, see § 301.6231(a)(7)–1(r)(2).

Approved: December 30, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue Service.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–885 Filed 1–25–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 98–041]

Special Local Regulations; Hillsborough Bay, Tampa, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent Special Local Regulations are being established for the Gasparilla Marine Parade on Hillsborough Bay in Tampa, Florida. This event will be held annually on the first Saturday in February between 10 a.m. and 1:30 p.m. Eastern Standard Time (EST). These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective on January 26, 1999.

FOR FURTHER INFORMATION CONTACT: LTJG Brian Hill, (305) 536–4250, or Assistant Operations Office, Coast Guard Group St. Petersburg, FL, (813) 824–7533.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking concerning these regulations was published in the **Federal Register** on September 21, 1998 (63 FR 50179). No comments were received during the 60 days comment period.

Background and Purpose

These regulations are needed to provide for the safety of life, to protect vessels participating in the parade, and to protect marine mammals during the Gasparilla Marine Parade. There will be approximately 750 participants, afloat and ashore, participating in the marine

parade. Also, 200–400 spectator craft are expected. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters.

The regulated area will prohibit commercial vessels, jet skis, and vessels without propulsion from entering Hillsborough Bay during the parade, and will establish an idle speed no wake zone inside the regulated area.

In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective in less than 30 days after **Federal Register** publication. A Notice of Proposed Rulemaking with a 60 day comment period was published in the **Federal Register** on September 21, 1998, with no negative comments received, and the parade is a well known annual event. Delaying its effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public as there is not sufficient time remaining to allow for a full 30 day delayed effective date prior to the event occurring in 1999 on February 6th.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for approximately five and one half hours in a limited area one day each year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities as these regulations will be in effect in a

limited area for five and one half hours only one day each year.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.734 is added to read as follows:

§ 100.734 Annual Gasparilla Marine Parade; Hillsborough Bay, Tampa, FL

(a) *Regulated Area.* A regulated area is established consisting of all waters of Hillsborough Bay and its tributaries north of a line drawn along latitude 27–51.30N. The regulated area includes the following in their entirety: Hillsborough Cut "D" Channel, Sparkman Channel, Ybor Channel, Seddon Channel and the Hillsborough River south of the John F. Kennedy Bridge. Coordinates Reference Datum: NAD 1983.

(b) *Special Local Regulations.*

(1) Entry into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 2:30 p.m. EST on the first Saturday in February.

(2) The regulated area is an idle speed, "no wake" zone.

(3) All vessels within the regulated area shall stay clear of and give way to

all vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels in excess of 80 feet in length without mooring arrangements made prior to the first Saturday in February, are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels in excess of 80 feet without prior mooring arrangements not officially entered in the Gasparilla Marine Parade, must use the alternate route through Sparkman Channel.

(c) *Dates.* This section becomes effective annually at 9 a.m. and terminates at 2:30 p.m. EST on the first Saturday in February.

Dated: January 15, 1999.

N.T. Saunders,

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

[FR Doc. 99–1697 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX86–1–7351a; FRL–6207–4]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonably Available Control Technology for Emissions of Volatile Organic Compounds (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving demonstrations submitted by Texas on January 10, 1996, that Reasonably Available Control Technology (RACT) is in place on sources in the following source categories: Plastic Parts Coating in the Dallas/Fort Worth area, Volatile Organic Liquid (VOL) Storage and Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor and Distillation Processes. Also, EPA is approving revisions to the Texas Rules for the control of VOC emissions that the State submitted between 1995 and 1997. Finally, for most of the measures given limited approval in the May 22, 1997 **Federal Register** (62 FR 27964),

this approval action converts the limited approval to a full approval. The implementation of these measures will help ensure the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone as required by the Clean Air Act (Act) as amended in 1990.

DATES: This direct final rule is effective on March 29, 1999 unless EPA receives adverse comments by February 25, 1999. If EPA receives such comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, Dallas, 1445 Ross Avenue, Texas 75202-2733, telephone: (214) 665-7214.
Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711-3087.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone: (214) 665-7242.

SUPPLEMENTARY INFORMATION:

I. Background

A. Background of VOC RACT Requirements

Section 172(c) of the Act, entitled *Nonattainment Plan Provisions*, requires that States implement RACT rules for stationary sources of VOC in ozone nonattainment areas. Reasonably Available Control Technology is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility as defined in 44 **Federal Register** (FR)

53761 (September 17, 1979). In accordance with section 108 of the Act, EPA publishes Control Technique Guideline (CTG) documents to help the States develop RACT rules for source categories. The CTGs provide information on available air pollution control techniques and provide recommendations on what EPA considers the "presumptive norm" for RACT.

Section 182(b)(2) of the Act requires States to adopt RACT rules for three general groups of stationary sources of VOCs in ozone nonattainment areas classified as moderate or above. The first group consists of sources covered by a CTG issued after the enactment of the amended Act of 1990. These CTGs are referred to as "post-enactment" CTGs. The second group consists of sources covered by an existing CTG, i.e., a CTG issued before the enactment of the amended Act of 1990. The third group consists of major sources not covered by a CTG. These sources are referred to as "non-CTG" sources.

In areas with a moderate classification, Section 302(j) defines a major source as one emitting or having the potential to emit 100 tons/year or more. For serious areas, major sources are defined in section 182(c) as those that emit or have the potential to emit at least 50 tons/year and in severe areas major sources are defined in section 182(d) as those that emit or have the potential to emit 25 tons/year or more. Texas currently has four ozone nonattainment areas; Beaumont/Port Arthur (moderate), Dallas/Fort Worth (serious¹), El Paso (serious), and Houston (severe).

Under section 183, *Federal Ozone Measures*, the Act requires EPA to issue CTGs for 13 source categories by November 15, 1993. Section 183 lists two specific source categories, Aerospace coatings and solvents, and Shipbuilding operations. The other 11 categories are listed in 57 FR 18077 (April 28, 1992), and are as follows:

1. SOCMi distillation
2. SOCMi Reactors
3. wood Furniture
4. plastic parts business machines
5. plastic parts coating (other)
6. offset lithography
7. industrial wastewater
8. auto refinishing
9. SOCMi batch processing
10. VOL storage tanks
11. clean up solvents

¹ Dallas/Fort Worth was reclassified to serious on February 18, 1998 (63 FR 8128). Texas will have to affirm in a future SIP revision that RACT is being implemented on sources that emit or have a potential to emit 50 tons/year or more.

To date, EPA has published CTGs for five of the 13 source categories: SOCMi distillation, SOCMi reactors, wood furniture, aerospace coatings and solvents, and shipbuilding. As described in a January 20, 1994, memorandum from John Seitz, Director of Office of Air Quality Planning and Standards, EPA made available Alternative Control Technology (ACT) documents for the CTG source categories for which CTG documents have not yet been published. These ACT documents provide much of the same information as the CTG documents, however, instead of establishing a presumptive norm for RACT rule, these documents provide options for control. For the major sources in categories where EPA issued an ACT instead of CTG, the ACT provides information to determine if RACT is being implemented as required for "non-CTG" sources.

For post-enactment CTGs, the Act requires States to submit RACT rules according to the schedule specified in the corresponding CTG document. In Appendix E of the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," published on April 28, 1992, in 57 FR 18077, EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG based on the list of expected CTGs in Appendix E. Pursuant to Appendix E of the General Preamble, if EPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994.

A March 2, 1995, policy memorandum from the Assistant Administrator for Air, Mary Nichols, explained a policy to allow phased submittals of attainment demonstration. Under this policy, States were to submit a Phase I submittal by December 31, 1995, which would include RACT requirements, Rate of Progress (ROP) reductions, and commitments to complete the attainment demonstration by mid-1997.

II. State Submittal

On January 10, 1996, the State of Texas submitted to EPA a State Implementation Plan (SIP) revision intended to meet the requirements pertaining to RACT and commitments to complete the air quality plan as necessary for a Phase I submittal under the March 2, 1995 policy. Texas in separate submittals has provided SIP

revisions designed to meet the ROP requirements. In this action, EPA is approving only the portions of the January 10, 1996, SIP revision regarding RACT for SOCMR Reactor and Distillation Processes, VOL Storage, and Plastic Parts coating for the Dallas/Fort Worth area. The EPA is taking no action on whether RACT is being implemented on other source categories included in the January 10, 1996, SIP revision, including industrial wastewater, batch processing, wood furniture coating, or shipbuilding operations. These categories will be addressed in future **Federal Register** actions. The EPA is also taking no action on other portions of the January 10, 1996, SIP revision submittal regarding commitments to continue air quality planning.

Also, in this action, EPA is approving revisions to the Texas rules for the control of VOCs submitted on January 11, 1995, July 12, 1995, November 10, 1995, March 13, 1996, August 9, 1996, and May 21, 1997.

III. Analysis of State Submittal

A. Plastic Parts Coating

The January 10, 1996, SIP revision explained that there was only one major source of VOC emissions in the plastic parts coating category in a nonattainment area in Texas. The facility, Peterbilt Motors Company is located in the Dallas/Fort Worth nonattainment area. The facility, which manufactures custom, heavy duty trucks, uses a catalytic oxidizer to control emissions from their painting operations. The EPA is approving these controls which are required by TNRCC permit as RACT.

B. SOCMR Reactor and Distillation Processes

In August 1993, EPA published the CTG document titled *Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry*. As well as providing considerable information on emissions, controls, and costs, the CTG provided a model regulation representing RACT.

Texas rules for control of SOCMR Reactor and distillation processes are contained in its rules for general vent gas control. Texas Natural Resource Conservation Commission (TNRCC) Chapter 115, Section 115.121–129. Texas revised these rules in November 1993 to include the requirements of the CTG. It should be noted that these changes were based on the draft CTG. Then, in January 1995, the State submitted a SIP revision that revised the

language dealing with the “once in always in” concept. Finally, on March 13, 1996, the State again revised the vent gas rule to allow exemptions for sources covered by other sections of TNRCC Chapter 115. Also, in the March 13, 1996 submittal, Texas revised the original rule to allow exemptions to be based on the total resource effectiveness (TRE) as RACT.

The Texas rules generally follow the approach contained in the CTG and the model rule. One difference between the Texas rule and the model approach is that Texas allows an exemption for streams of 0.011 standard cubic meters/min versus 0.0085 standard cubic meters/min in the model rule. This exemption is consistent with the New Source Performance Standard (NSPS). Another difference is that the Texas rule requires sources to use the equations contained in the NSPS for determining exemptions based on TRE rather than the equations contained in the CTG model rule. The NSPS equations set more stringent exemption levels than the equations included in the CTG. In combination, the Texas approach for determining exempt sources is more stringent than the CTG, so the rules are acceptable as RACT. C: Volatile Organic Liquid Storage: For this source category, EPA did not issue a CTG. Instead, EPA issued an Alternate Control Technique Document. An ACT does not identify a “presumptive norm” for RACT but instead provides cost information about potential control options. For VOL storage, EPA had previously published two CTGs for storage of petroleum liquids. These CTGs were:

Storage of Petroleum Liquids in Fixed Roof Tanks (EPA-450/2-77-036), December 1977.

Petroleum Liquid Storage in External Floating Roof Tanks (EPA-450/2-78-051), December 1978.

The VOL ACT recommends controls for all volatile organic liquids not just petroleum liquids. Texas has long regulated emissions from storage of all volatile organic liquids not just petroleum liquids. To ensure that the RACT is in place, EPA believes Texas must consider the new information provided in the ACT to see if additional controls may be technically or economically reasonable. Texas demonstrated that their existing rules provide nearly equivalent control to that provided by the most stringent control provided by the ACT.

Texas followed EPA’s 5 percent policy that allows States to deviate from CTG requirements if the State rule results in nearly the same amount of control. This policy is articulated in a

June 30, 1978, memorandum from Richard Rhoads, Director Control Programs Development Division, to Allyn Davis, Director Air and Hazardous Materials Division, Region IX.

Approving a State regulation that differs from the CTG is possible, if the impact on emissions differs imperceptibly (less than 5 percent) from that of the CTG.

Texas has included a detailed demonstration that their rules result in less than a 5 percent difference in emissions from the most stringent control options included in the ACT. The ACT suggests that the following upgrades to the Texas rule would be reasonable.

(1) Lowering the vapor pressure exemption to 0.5 or 0.75 psi.

(2) upgrading of vapor mounted primary seals on internal floating roof tanks.

(3) installation of secondary seals on external floating roof tanks.

(4) 95 percent control efficiency for add-on control devices.

(5) installation of gasketed seals.

The State submittal addresses each of these requirements in turn and estimates the increased emissions associated with continued compliance with the State rule versus compliance with the suggested additional ACT controls. The EPA has analyzed the State submittal and agrees that implementing the more stringent requirements of the ACT will result in less than a 5 percent decrease in the emissions from VOL storage tanks in Texas. The reason the State can make this demonstration is that the State rules control some VOL storage tanks that the ACT does not suggest controlling.

D. Miscellaneous Rule Revisions

The State has submitted several rule revisions during the period January 1995 to March 1997. What follows is a brief description of the most significant changes made in these SIP revisions. The Technical Support Document for this action contains a more detailed evaluation of these rules.

1. January 11, 1995 Revisions

In this SIP revision, the State made minor revisions to its General Rules and rules for the control of emissions from storage of VOCs, vent gas control, industrial wastewater, municipal solid waste landfills, and loading and unloading of VOCs. The most significant changes were:

Revisions to the rules for storage of VOCs (115.112–115.119) to add additional methods for determining true vapor pressure to include American Society for Testing and Materials Test Methods D323–89,

D2879, D4953, D5190 or D5191. These additional test methods are acceptable.

Revisions to Rules for Vent Gas Control (115.121–115.149) to clarify the applicability requirements to include once-in-always-in requirements. This means that vents that become subject to the control requirements remain subject to the control requirements even if the vent's throughput later falls below the applicability threshold. Texas has included a provision that a source can become exempt from the rule if the source institutes a project that would lower emissions below the level of emissions that would be achieved by control of the vent stream. It is not sufficient, however to control emissions to just the level of emissions to applicability level of the rule. The EPA believes these revisions are acceptable.

Revisions to the rules for the control of Industrial Wastewater to clarify the rules. These rules were revised to correct cross-references to other TNRCC rules and to clarify their use as contingency measures in Beaumont/Port Arthur. The EPA is giving these minor changes limited approval because they strengthen rules previously given limited approval.

Revisions to the rule for Control of emissions from Municipal Solid Waste Landfills to extend the compliance date from May 31, 1995 to November 15, 1996. These rules were submitted as part of the 15% Rate-of-Progress Plan. The rules were given limited approval on May 22, 1997 62 FR 27964 as a strengthening of the SIP. The EPA is taking no action on these revisions in this action. The EPA will determine whether these rules are fully approvable in its action on the State Plan for Municipal Waste Landfill emissions control as required by section 111 of the Act and 40 CFR part 60, subparts Cc and WWW.

2. July 12, 1995 Revisions to VOCs Loading and Unloading Rules (115.212–115.219)

These are revisions to rules that require control of emissions during the loading of VOCs into tanker trucks and rail cars. Texas previously revised these rules to prohibit any non-vapor tight conditions during loading. The revision to the rule allows non-vapor tight conditions during sampling and gauging provided that the loading of VOCs is discontinued. The EPA believes that this revision is an acceptable change that with the conditions imposed by the

State will result in only minor emissions and will facilitate operations.

3. November 10, 1995 Revisions to Requirements for Wastewater Separators

The State revised these rules that control emissions from oil/water separators to provide consideration for oil/water separators at oil and gas productions facilities. The revision provides an exemption for oil/water separators at oil and gas facilities that emit less than 18 tons/year (100 pounds/day). The exemption is necessary because these facilities are at remote locations often without existing flare systems so the installation of controls is not considered cost effective.

The State required controls at oil and gas production facilities when the State made revisions required by 182(b)(2) which required existing RACT controls to be extended to the newly designated nonattainment counties. The extension of the rules to the counties surrounding the Houston/Galveston areas affected many oil and gas production facilities. Previously, when these measures applied only in the urban areas, most of the wastewater separators were located at refinery or chemical plants where flare systems to control emissions were available.

The EPA issued a pre-enactment CTG "Control of Refinery Vacuum Systems, Wastewater Separators and Process Unit Turnarounds" on which the Texas Wastewater Separator rules are based. The CTG only applies to separators at refineries. Therefore, the CTG does not cover oil/water separators at oil and gas productions facilities. Further, by requiring oil/water separators that emit more than 100 pounds/day be controlled, Texas is ensuring that RACT is implemented at major sources. One hundred pounds/day translates to a maximum of about 18 tons/year which is well under the 25 tons/year major source definition in the Houston area. Finally, Texas has not projected emission reductions at oil and gas production facilities in its 15% plan or attainment plans. For the above reasons, this revision to the SIP is acceptable.

4. March 13, 1996 Revisions

This SIP revision includes revisions adopted by the TNRCC on December 6, 1995, and February 14, 1996.

On December 6, 1995, TNRCC adopted revisions to its rules for control of emissions from consumer and commercial products (115.612). The change deletes the VOC content limits for Insect-Repellents-Aerosols. The previous requirements had not gained widespread consumer acceptance. The deletion of the requirements makes the

regulations in Texas consistent with other States' consumer products rules, and the final national consumer product rule (63 FR 48819). Texas used EPA estimates of the amount of emission reductions from the national rule to project emissions reductions from the State consumer/commercial product rules. Therefore, since this rule change is consistent with the national rulemaking, the EPA still expects the projected reductions to be achieved.

On February 14, 1996, Texas adopted changes to several of its rules for VOC control. The most significant are described below.

The State revised its definition of VOC to exclude acetone, parachlorobenzotrifluoride, and volatile methyl siloxanes. The EPA has ruled that these compounds have negligible photochemical reactivity and thus do not contribute to the formation of urban ozone (59 FR 50693 and 60 FR 31633). These changes to the definition of VOC make the TNRCC definition consistent with the Federal definition.

The State also clarified that a tank with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) is considered to be an internal floating roof storage tank. These self-supporting roofs are effective in controlling emissions because support poles do not penetrate the floating cover.

The State revised its storage tank rules to establish separate inspection requirements for internal and external floating roof tanks. They also establish a repair schedule where repairs of tank controls will take place within 60 days of discovery. The modifications clarify that facilities that are exempt from control because they store low vapor pressure materials are not exempt from maintaining records of the vapor pressure of the materials stored to show that they qualify for the exemption.

The State revised its vent gas control rules (Sections 115.121–129) to clarify that these rules were designed to control vents from processes that were not otherwise controlled by the Texas VOC control rules. This clarifies a long standing interpretation of the rule.

The State revised its rules to control emissions from Volatile Organic Compound Transfer Operations (115.212 to 115.219) to delete the requirement for vacuum assisted vapor collection systems on gasoline loading racks. The TNRCC adopted this requirement because EPA proposed it to be part of the Maximum Available Control Technology standard for gasoline terminals. The EPA dropped the requirement in the final MACT rule because it does not result in meaningful

additional emission reductions. The EPA estimated that installing the technology results in only 1.3 percent improvement in capture efficiency. Thus, the emission reduction potentially lost by not installing this technology is considered to be negligible. In addition, vacuum assisted vapor collection systems are not called for by the CTG for gasoline loading operations so this requirement is not necessary for the rule to be acceptable as RACT.

The State revised the rules for control of emissions from Degreasing Processes (115.412–419) to remove the requirement for control of acetone, because this chemical has been added to the list of substances that are not considered photochemically reactive (June 15, 1995, 60 FR 31633).

The State has revised its rules for the control of emissions from Surface Coating Processes to change the units of the emission limits from pounds VOC/gallon of solids to pounds VOC/gallon of coating. While this change is acceptable, it is important that all equivalency calculations for sources using improved transfer efficiency or add-on control devices be made on a solids basis. Texas included provisions in its rule to make this clear, including formulas to translate VOC content to a solids basis.

Texas also included a revision to provide for registration of an innovative product just before its introduction into the Texas market. Innovative products are those that due to some characteristic of the product formulation, design, delivery systems, or other factors, the use of the product will result in equal or less VOC emissions as compared to products that comply with the VOC limits in the rule. Registration is a departure from the approach of requiring approval of the innovative product by the State and/or EPA before marketing. Texas has included in the rules a considerable deterrent to facilities marketing noncompliant innovative products. A company will be required to provide VOC emission reduction in each nonattainment area equivalent to twice the excess emissions determined to have occurred in the respective nonattainment area due to the marketing of the non-compliant product. The manufacturer will be required to reformulate or withdraw the noncompliant product.

The innovative product waiver procedure provides for alternate means of compliance with the SIP with less review than EPA would generally find acceptable. Generally, EPA only approves provisions in SIPs for alternate methods of compliance which include a

replicable procedure that will insure emission reductions equivalent to the underlying SIP provision. The EPA believes that the innovative product waiver procedure is acceptable, in this instance, because of the national rule for control of consumer product emissions (63 FR 48819). The national rule contains a procedure for obtaining innovative product waivers very similar to the procedure contained in the Texas Rule. Under the national rule, those regulated entities that have received innovative product waivers under State Regulations may submit the factual basis for the waiver to EPA as part of the documentation to receive an innovative product waiver from EPA. Also, the Texas rules provide for innovative product waivers from the Texas rules in a situation where the EPA has approved the waiver and the Federal standard is as stringent as the State. The TNRCC Executive Director will provide these waivers within 45 days of receipt.

5. August 9, 1996, Revisions to VOC Loading/Unloading (115.212–115.219) and Consumer Products Rules (115.616)

The State revised the requirement for quarterly instrument inspections for fugitive leaks at gasoline terminals to be replaced with monthly inspections using audio-visual-olfactory (AVO) methods. The requirement for instrument monitoring for fugitive leaks at gasoline terminals was originally added to achieve emission reductions as part of the State's 15% ROP plans. The State revised the rule to be consistent with Maximum Available Control Technology (MACT) rules (December 14, 1994, 59 FR 64303). The State referenced an American Petroleum Institute (API) study that showed that monthly AVO inspections at gasoline terminals achieved essentially the same amount (no statistical difference) of emission reductions as an instrument monitoring program. The EPA used this study in the issuance of the MACT standard. Based on the API study and the adopted MACT standard, these changes to the Texas rule are considered acceptable because the same emission reductions toward the 15% ROP plans should be achieved. The CTG for gasoline terminals does not require monitoring for fugitive leaks. Therefore, allowing AVO monitoring instead of instrument monitoring is acceptable to meet RACT requirements.

Texas also modified its consumer products rules to revise the labeling requirement to provide an option that rather than including the date of manufacture, the producer can put on the product label a statement that the product was manufactured after a

certain day, month, and year, so long as that date is after the compliance date of the rule of January 1, 1996. This change is acceptable because sufficient information is still available to determine if a product is subject to the rules.

6. May 21, 1997, Vent Gas, Fugitives and Miscellaneous Revisions to the VOC Rules

The State made a variety of changes to its rules for the control of VOC emissions. Most of the changes were minor clarifications. The most notable changes are:

Updating the definition of VOC to be consistent with EPA definition of VOC by adding three compounds (HCFC–225ca, HCFC–225cb and HFC 43–10mee) to the list of exempt chemicals because they have negligible photochemical reactivity. This action is consistent with EPA's definition (61 FR 52847, October 8, 1996).

The State revised the rules for the control of emissions from Marine Vessel Loading. These rules previously allowed only vessels certified as leak free to be loaded. Because many vessels, particularly from foreign ports could not provide the required certification, the State added the following alternatives: VOCs shall be loaded into the marine vessel with the vessel product tank at negative pressure; leak testing shall be performed using Method 21 during the final 20 percent of loading, or documentation of leak testing conducted during the last 12 months by Method 21. The above alternatives are consistent with the Marine Vessel Loading MACT, and should serve to limit leaks during the loading of VOCs to Marine Vessel loading operations.

The State deleted the requirement that repair of valves be accompanied by the simultaneous use of an organic vapor analyzer. This is known as directed maintenance. This requirement was added as part of the new leak detection and repair rules developed as part of the 15% ROP plan. Directed maintenance is not required by any CTG, so it is not needed to insure that RACT is in place. The State also did not project additional emission reductions because of the inclusion of directed maintenance, and there is some question whether additional emission reductions occur by requiring this practice. Therefore it is acceptable to remove this provision.

V. Final Action

By this action, EPA is approving the revisions to the Texas SIP submitted on January 10, 1996, concerning RACT for VOCs for the following source categories: plastic parts coating in the Dallas/Fort Worth area, SOCM distillation processes, SOCM reactor processes and VOL storage.

With the approval of these rules, the applicable requirements relating to RACT for eight of the 13 CTG source categories have been met. No action has been taken with respect to whether RACT has been implemented for the industrial wastewater, batch processing, wood furniture, ship building operations, or aerospace coatings categories.

Texas submitted rules for the control of emissions from wood coating operations as part of their November 13, 1993, SIP revision. The EPA granted these rules limited approval on May 22, 1997. Texas has submitted revised rules to control emissions from wood furniture coating and new rules for ship building operations on April 13, 1998. The EPA will take action on these revisions and new rules in separate **Federal Register** notices. Also, the EPA has issued a CTG for aerospace coating. Texas is beginning the process of developing rules based on the aerospace CTG. Finally, Texas proposed in their January 10, 1996, SIP revision that existing TNRCC rules represented RACT for industrial wastewater and batch processing. For batch processing, the State claimed that the existing vent gas rule represented RACT for batch processing. The EPA will evaluate the State's demonstrations for industrial wastewater and batch processing in future **Federal Register** actions.

In addition, EPA is approving as RACT revisions to the Texas rules for the control of VOCs submitted on January 11, 1995 (except for the industrial wastewater revisions and the municipal solid waste landfill revisions), July 12, 1995, November 10, 1995, March 13, 1996, August 9, 1996, and March 21, 1997. No action is being taken on the revisions to the municipal solid waste landfill rules. See the following discussion for EPA action on the revisions to the industrial wastewater rules.

Limited Approval of VOC Control Measures

On November 13, 1993, May 9, 1994, and August 3, 1994, Texas submitted a number of revisions to its rules for VOC control as part of its plan to meet the 15% ROP requirements of the Act. On May 22, 1997 (62 FR 27964), EPA

published a limited approval of these control measures in the Texas 15% ROP plan. The EPA gave these rules limited approval because they strengthened the SIP. The rules could not receive full approval because the rules had not been demonstrated to meet the underlying requirements of the Act, such as the requirement to implement RACT. In this action, the limited approval of rules in the November 13, 1993, May 9, 1994, and August 3, 1994 submittals is converted to a full approval with the exception of the rules for the control of emissions from industrial wastewater, wood furniture, municipal waste landfills, and bakeries which retain their limited approval. These latter rules status as RACT will be addressed in separate actions.

Also, in today's action, the EPA is giving limited approval to the revisions to the industrial wastewater rules submitted on January 11, 1995, because the rules strengthen the SIP by clarifying the requirements.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 29, 1999 without further notice unless we receive adverse comment by February 25, 1999. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, generally requires

an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

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

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

F. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

Under E.O. 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 or EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

G. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 1999. 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, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 10, 1998.

Sam Becker,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraphs (c)(105) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(105) Revisions to the Texas State Implementation Plan, submitted to EPA in letters dated January 11, 1995; July 12, 1995; November 10, 1995; January 10, 1996; March 13, 1996; August 9, 1996 and May 21, 1997. Sections 115.122(a)(3), 126(a)(4), 126(a)(5), 127(a)(5) and 129(2)–129(5) pertaining to bakeries, 115.140–115.149 pertaining to Industrial Wastewater, 115.421(a)(13) pertaining to wood coating, and 115.152–115.159 pertaining to municipal waste landfills retain their limited approval as revised in these SIP revisions because they strengthen the SIP. All other sections of these SIP revisions receive full approval.

(i) Incorporation by Reference

(A) Revisions to the General Rules as adopted by the Texas Natural Resources Conservation Commission (Commission) on January 4, 1995, effective January 27, 1995, Section 101.10(a)(1).

(B) Revisions to Regulation V, as adopted by the Commission on January 4, 1995, effective on January 27, 1995, Sections 115.112(c), 115.112(c)(2)(A), 115.112(c)(3), 115.113(a), 115.113(b), 115.113(c), 115.115(a)(7), 115.115(b)(7), 115.116(a)(2), 115.116(a)(2)(A)–115.116(a)(2)(J), 115.117(c), 115.119 introductory paragraph, 115.121(b), 115.122(a)(4)(B), 115.123(a)(1), 115.127(a)(5)(C), 115.127(b)(2)(A), 115.127(b)(2)(B), 115.143 introductory paragraph, 115.147(6), 115.149(a), 115.149(b), 115.159(a), 115.219(c).

(C) Certification dated January 4, 1995 that copies of revisions to General Rules and Regulation V adopted by the Commission on January 4, 1995, and submitted to EPA on January 11, 1995, are true and correct copies of documents on file in the permanent records of the Commission.

(D) Revisions to Regulation V, as adopted by the Commission on May 24, 1995, effective June 16, 1995, Sections 115.212(a)(1), 115.212(a)(2), 115.212(a)(5)(A)(i), 115.212(a)(5)(A)(ii), 115.212(a)(5)(C), 115.212(a)(5)(C)(i), 115.212(a)(5)(C)(ii), 115.212(a)(5)(D), 115.212(a)(10)(C), 115.212(a)(10)(C)(i), 115.212(a)(10)(C)(ii), 115.212(a)(12)(B), 115.212(b)(1), 115.212(b)(3)(A), 115.212(b)(3)(A)(i), 115.212(b)(3)(A)(ii), 115.212(b)(3)(C), 115.212(c)(1), 115.212(c)(2), 115.212(c)(3)(A), 115.212(c)(3)(A)(i), 115.212(c)(3)(A)(ii), 115.212(c)(3)(C), 115.213(a), 115.213(b), 115.213(c), 115.214(a)(3), 115.214(a)(4), 115.214(a)(4)(A)–115.214(a)(4)(E), 115.214(a)(5), 115.215(a)(7), 115.215(b)(7), 115.216(a)(3)(A), 115.215(a)(3)(B), 115.216(a)(4)(A), 115.216(a)(4)(B), 115.216(a)(5)(A), 115.216(a)(6)(C), 115.217(a)(3), 115.217(a)(4), 115.217(a)(6)(A)–115.217(a)(6)(D), 115.217(b)(2), 115.217(b)(4), 115.217(b)(4)(D), 115.217(b)(5)(C), 115.217(c)(2), 115.217(c)(4)(D), 115.217(c)(5)(C), 115.219 introductory paragraph, 115.219(1), 115.219(2), 115.219(3), 115.219(4), 115.219(5).

(E) Certification dated May 24, 1995, that the copy of revisions to Regulation V adopted by the Commission on May 24, 1995, and submitted to EPA on July 12, 1995, is a true and correct copy of the document on file in the permanent records of the Commission.

(F) Revisions to Regulation V, as adopted by the Commission on October 25, 1995, effective November 20, 1995, Sections 115.131(a), 115.131(c), 115.132(c), 115.133(a), 115.133(b), 115.133(c), 115.135(a), 115.135(a)(5), 115.135(b), 115.135(b)(5), 115.137(a)(1), 115.137(a)(2), 115.137(a)(3), 115.137(c), 115.137(c)(4), 115.139 introductory paragraph.

(G) Certification dated October 25, 1995, that the copy of revisions to Regulation V adopted by the Commission on October 25, 1995, and submitted to EPA on November 10, 1995, is a true and correct copy of the document on file in the permanent records of the Commission.

(H) Revisions to Regulation V, as adopted by the Commission on December 6, 1995, effective December 28, 1995, Section 115.612(a)(1) (Table III).

(I) Certification dated December 6, 1995, that the copy of revisions to Regulation V adopted by the Commission on December 6, 1995, and submitted to EPA on March 13, 1996, is a true and correct copy of the document on file in the permanent records of the Commission.

(J) Revisions to the General Rules as adopted by the Texas Natural Resource Conservation Commission on February 14, 1996, effective March 7, 1996, Section 101.1, definitions of Automotive basecoat/clearcoat system (used in vehicle refinishing (body shops)), Automotive precoat (used in vehicle refinishing (body shops)), Automotive pretreatment (used in vehicle refinishing (body shops)), Automotive primer or primer surfacers (used in vehicle refinishing (body shops)), Automotive sealers (used in vehicle refinishing (body shops)), Automotive specialty coatings (used in vehicle refinishing (body shops)), Automotive three-stage system (used in vehicle refinishing (body shops)), Automotive wipe-down solutions (used in vehicle refinishing (body shops)), Cold solvent cleaning, Conveyorized degreasing, Gasoline bulk plant, Gasoline terminal, High-bake coatings, Low-bake coatings, Mechanical shoe seal, Open-top vapor degreasing, Remote reservoir cold solvent cleaning, Vehicle refinishing (body shops), Volatile organic compound.

(K) Revisions to Regulation V, as adopted by the Commission on February 14, 1996, effective March 7, 1996, Section 115.1, definitions of Automotive basecoat/clearcoat system (used in vehicle refinishing (body shops)), Automotive precoat (used in vehicle refinishing (body shops)), Automotive pretreatment (used in vehicle refinishing (body shops)), Automotive primer or primer surfacers (used in vehicle refinishing (body shops)), Automotive sealers (used in vehicle refinishing (body shops)), Automotive specialty coatings (used in vehicle refinishing (body shops)), Automotive three-stage system (used in vehicle refinishing (body shops)), Automotive wipe-down solutions (used in vehicle refinishing (body shops)), Cold solvent cleaning, Conveyorized degreasing, External floating roof, Gasoline bulk plant, Gasoline terminal, High-bake coatings, Internal floating cover, Low-bake coatings, Mechanical shoe seal, Open-top vapor degreasing, Remote reservoir cold solvent cleaning, Vehicle refinishing (body shops), Volatile organic compound, sections 115.112(a)(2), 115.112(a)(2)(A), 115.112(a)(2)(B), 115.112(a)(2)(D), 115.112(b)(2), 115.112(b)(2)(A),

115.112(b)(2)(B), 115.112(b)(2)(D), new 115.114, 115.116(a)(1), 115.116(b)(1), 115.117(a)(1), 115.117(a)(4), 115.117(a)(6), 115.116(a)(6)(A), 115.117(a)(7), 115.117(a)(7)(A), 115.117(b)(1), 115.117(b)(4), 115.117(b)(6)(A), 115.117(b)(7)(A), 115.117(c), 115.117(c)(1), 115.121(a)(1)–115.121(a)(4), 115.121(c), 115.122(a)(1)–115.122(a)(3), 115.122(a)(3)(C), 115.122(a)(3)(D), 115.122(c), 115.123(c), 115.126(a)(1), 115.126(a)(5), 115.126(a)(5)(A), 115.127(a)(1), 115.127(a)(2), 115.127(a)(2)(A)–115.127(a)(2)(E), 115.127(a)(3), 115.127(a)(3)(A)–115.127(a)(3)(C), 115.127(a)(4), 115.127(a)(4)(A)–115.127(a)(5)(E), 115.127(a)(5), 115.127(a)(6), 115.127(a)(7), 115.127(b)(2), 115.127(b)(3), 115.127(b)(4), 115.127(c), 115.127(c)(2)(B), 115.127(c)(3), 115.127(c)(4), 115.129(1)–115.129(5), 115.212(a)(11), 115.219 introductory paragraph, 115.219(5), 115.219(5)(A)–115.219(5)(C), 115.412(a), 115.413(a), 115.413(b), 115.416(a), 115.417(a)(3), 115.417(a)(4), 115.417(b)(5), 115.419 introductory paragraph, 115.421(a), 115.421(a)(1)–115.421(a)(8), 115.421(a)(8)(B), 115.421(a)(8)(B)(i)–115.421(a)(8)(B)(ix), 115.421(a)(8)(C), 115.421(a)(9)(A)(i)–115.421(a)(9)(A)(v), 115.421(a)(12)(A), 115.421(a)(12)(A)(i), 115.421(a)(12)(A)(ii), 115.421(b), 115.421(b)(1)–115.421(b)(8), 115.421(b)(8)(A), 115.421(b)(8)(A)(i)–115.421(b)(8)(A)(iv), 115.422(1), 115.422(2), 115.423(a)(1), 115.423(a)(2), 115.423(b), 115.423(b)(1), 115.423(b)(2), 115.423(b)(4), 115.425(a)(1)(C), 115.425(b)(1)(C), 115.426(a)(1)(B), 115.427(a)(1)(A)–115.427(a)(1)(D), 115.427(a)(3), 115.427(a)(5), 115.427(b)(2), 115.427(b)(2)(B)–115.427(b)(2)(D), 115.427(b)(3), 115.429(a), 115.429(b), 115.433(a), 115.433(b), 115.435(a)(5), 115.435(b)(5), 115.436(a), 115.436(b), 115.437(a)(1), 115.437(a)(2), 115.439(b), 115.439(c), 115.442(1)(F)(i), 115.422(1)(F)(ii), 115.443 introductory paragraph, 115.445(5), 115.446(7), 115.512(1), 115.512(2), 115.513 introductory paragraph, 115.517(1), 115.541(a)(2)(C), 115.541(2)(E), 115.541(b), 115.541(b)(5), 115.542(a)(1), 115.542(a)(2), 115.542(a)(5), 115.542(b), 115.542(b)(1), 115.542(b)(2), 115.542(b)(4), 115.543 introductory paragraph, 115.546(1)(A), 115.547 introductory paragraph, 115.547(2), 115.547(4), 115.547(5), 115.549(a)–115.549(c), 115.600 introductory paragraph and definitions of Consumer product, Pesticide, Sections 115.614(a), 115.614(c), 115.614(c)(1), 115.614(c)(1)(A)–115.614(c)(1)(F), 115.614(c)(2),

115.614(c)(2)(A)–115.614(c)(2)(F), 115.614(d), 115.614(e), 115.614(f), 115.617(h).

(L) Certification dated February 14, 1996, that copies of revisions to General Rules and Regulation V adopted by The Commission on February 14, 1996, and submitted to EPA on March 13, 1996, are true and correct copies of documents on file in the permanent records of the Commission.

(M) Revisions to Regulation V, as adopted by the Commission on July 24, 1996, effective August 16, 1996, Sections 115.214(a)(4), 115.214(a)(4)(E), 115.214(a)(5), 115.216(a), 115.216(a)(7), 115.216(a)(7)(A)–115.216(a)(7)(G), 115.616(a), 115.616(a)(1)–115.616(a)(3).

(N) Certifications dated July 24, 1996, that the copy of revisions to Regulation V adopted by the Commission on July 24, 1996, and submitted to EPA on August 9, 1996, is a true and correct copy of the document on file in the permanent records of the Commission.

(O) Revisions to the General Rules as adopted by the Commission on April 30, 1997, effective May 22, 1997, Section 101.1, introductory paragraph and definitions of Component, Leak, Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation, Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process, Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation, Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit, Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process, Tank-truck tank, Vehicle refinishing (body shops), Volatile organic compound (introduction paragraph).

(P) Revisions to Regulation V, as adopted by the Commission on April 30, 1997, effective May 22, 1997, Section 115.10, introductory paragraph and definitions of Fugitive emission, Leak, Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation, Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process, Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation, Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit, Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process, Tank-truck tank, Vehicle refinishing (body shops), Volatile organic compound (introduction paragraph), and Sections 115.112(a)(2), 115.112(a)(2)(F), 115.112(b)(2), 115.112(b)(2)(F), 115.114(a), 115.114(a)(1), 115.114(a)(2), 115.114(a)(4), 115.114(b), 115.114(b)(1),

115.114(b)(2), 115.114(a)(4), 115.114(c), 115.114(c)(1), 115.114(c)(2), 115.115(a)(6), 115.115(b)(6), 115.116(a)(5), 115.116(b)(5), 115.119(a), 115.119(b), 115.121(a)(1), 115.121(a)(2), 115.121(a)(2)(A)–115.121(a)(2)(E), 115.121(a)(3), 115.121(b), 115.121(c), 115.121(c)(1), 115.121(c)(2), 115.121(c)(3), 115.121(c)(4), 115.122(a)(1), 115.122(a)(1)(A), 115.122(a)(1)(B), 115.122(a)(1)(C), 115.122(a)(2), 115.122(a)(2)(A), 115.122(a)(2)(B), 115.122(a)(3), 115.122(a)(4), 115.122(a)(4)(A), 115.122(a)(4)(B), 115.122(b), 115.122(b)(1), 115.122(b)(2), 115.122(b)(3), 115.122(c), 115.122(c)(1), 115.122(c)(1)(A)–115.122(c)(1)(C), 115.122(c)(2), 115.122(c)(2)(A), 115.122(c)(2)(B), 115.122(c)(3), 115.122(c)(3)(A), 115.122(c)(3)(B), 115.122(c)(4), 115.122(c)(4)(A), 115.122(c)(4)(B), 115.123(a)(1), 115.123(b), 115.123(c), 115.126(a), 115.126(a)(3), 115.126(a)(4)(A), 115.126(a)(4)(B), 115.126(a)(4)(C), 115.126(a)(5)(A)–115.126(a)(5)(C), 115.126(b), 115.126(b)(3), 115.127(a)(2), 115.127(a)(2)(C), 115.127(a)(2)(D), 115.127(a)(2)(E), 115.127(a)(3), 115.127(a)(4), 115.127(a)(4)(A)–115.127(a)(4)(E), 115.127(a)(5), 115.127(c), 115.127(c)(1), 115.127(c)(1)(A)–115.127(c)(1)(C), 115.127(c)(2), 115.129(1)–115.129(5), 115.132(a)(1), 115.132(a)(4)(A), 115.132(a)(4)(B), 115.132(b)(1), 115.132(c), 115.132(c)(1), 115.136(a)(4), 115.136(b)(4), 115.137(a)(3), 115.137(b)(5), 115.137(c), 115.137(c)(4), 115.146(5), 115.147(5)(A), 115.147(5)(B), 115.147(5)(C), 115.149(b), 115.153 introductory paragraph, 115.156(3)(E)(i), 115.159(a), 115.159(b), 115.159(c), 115.211(a)(1), 115.211(a)(3), 115.212(a)(1), 115.212(a)(2), 115.212(a)(3), 115.212(a)(3)(A), 115.212(a)(3)(A)(i), 115.212(a)(3)(A)(ii), 115.212(a)(3)(B), 115.212(a)(3)(C), 115.212(a)(3)(C)(i), 115.212(a)(3)(C)(ii), 115.212(a)(3)(D), 115.212(a)(4), 115.212(a)(5), 115.212(a)(6), 115.212(a)(6)(A), 115.212(a)(6)(B), 115.212(a)(6)(C), 115.212(a)(7), 115.212(a)(7)(A)–115.212(a)(7)(D), 115.212(a)(8), 115.212(a)(8)(A), 115.212(a)(8)(B), 115.212(a)(8)(B)(i), 115.212(a)(8)(B)(ii), 115.212(a)(8)(B)(iii), 115.212(a)(8)(C), 115.212(a)(8)(C)(i), 115.212(a)(8)(C)(ii), 115.212(a)(9), 115.212(a)(10), 115.212(a)(10)(A), 115.212(a)(10)(B), 115.214(a)(4), 115.214(a)(4)(E), 115.214(a)(5), 115.215(a)(8), 115.216(a), 115.216(a)(1), 115.216(a)(6), 115.216(b), 115.216(b)(1), 115.217(a)(1), 115.217(a)(2), 115.217(a)(3), 115.217(a)(4), 115.217(a)(4)(A), 115.217(a)(4)(B),

115.217(a)(5), 115.217(a)(6), 115.217(a)(6)(A)–115.217(a)(6)(D), 115.217(a)(7), 115.217(a)(7)(A)–115.217(a)(7)(E), 115.217(a)(8), 115.217(a)(8)(A)–115.217(a)(8)(C), 115.217(a)(9), 115.217(b)(2), 115.217(b)(4)(A)–115.217(b)(4)(D), 115.217(b)(5), 115.217(c)(2), 115.217(c)(4), 115.217(c)(4)(A)–115.217(c)(4)(D), 115.217(c)(5), 115.219(1), 115.219(4), 115.221 introductory paragraph, 115.222(7), 115.223 introductory paragraph, 115.226 introductory paragraph, 115.226(1), 115.253 introductory paragraph, 115.256 introductory paragraph, 115.311(a)(1), 115.311(a)(2), 115.311(b)(1)–115.311(b)(2), 115.312(a)(2), 115.312(a)(2)(A)–115.312(a)(2)(C), 115.312(b)(2), 115.312(b)(2)(A)–115.312(b)(2)(C), 115.313(a), 115.313(b), 115.319 introductory paragraph, 115.322 introductory paragraph, 115.322(1)–115.322(5), 115.323 introductory paragraph, 115.323(1), 115.323(2), new 115.324, 115.325 introductory paragraph, 115.325(1)–115.325(3), 115.326 introductory paragraph, 115.326(1), 115.326(2), 115.326(2)(A)–115.326(2)(I), 115.326(3), 115.324(4), 115.327 introductory paragraph, 115.327(1), 115.327(1)(A)–115.327(1)(C), 115.327(2)–115.327(6), 115.329 introductory paragraph, 115.352(1), 115.352(2), 115.352(9), 115.353 introductory paragraph, 115.354(1)(C), 115.354(4)–115.354(7), 115.354(7)(A), 115.354(7)(B), 115.354(8), 115.356(1)(I), 115.356(3), 115.357(2), 115.357(8), 115.421(a), 115.421(a)(13)(A), 115.422(3)(A), 115.422(3)(B), 115.424(a)(1), 115.424(a)(2), 115.424(b)(1), 115.426(a)(1)(D), 115.426(a)(2)(C), 115.426(b)(1)(D), 115.426(b)(2)(C), 115.427(a)(5), 115.427(a)(6), 115.442(1)(B)–115.442(1)(D), 115.446(8), 115.449(a), 115.449(b), 115.449(c), 115.532(a)(5), 115.532(a)(5)(A), 115.532(a)(5)(B), 115.533(a), 115.533(b), 115.536(a)(5), 115.536(b)(5), 115.537(a)(5), 115.539 introductory paragraph, 115.552(b)(1), 115.552(b)(2), 115.553 introductory paragraph, 115.559(a)–115.559(d), and repeal of Sections 115.332, 115.333, 115.334, 115.335, 115.336, 115.337, 115.339, 115.342, 115.343, 115.344, 115.345, 115.346, 115.347, 115.349.

(Q) Certification dated April 30, 1997, that copies of revisions to General Rules and Regulation V adopted by the Commission on April 30, 1997, and submitted to EPA on May 21, 1997, are true and correct copies of documents on file in the permanent records of the Commission.

(R) Texas Natural Resource Conservation Commission order adopting amendments to the SIP; Docket Number 95-1198-RUL, issued December 19, 1995.

(ii) Additional Material

(A) TNRCC certification letter dated December 13, 1995, and signed by the Chief Clerk, TNRCC that the attached are true and correct copies of the SIP revision adopted by the Commission on December 13, 1995.

(B) The following portions of the SIP narrative entitled Post-1996 Rate of Progress Plan for the Beaumont/Port Arthur and Houston/Galveston Ozone Nonattainment Areas Dated December 13, 1995: The section pertaining to Storage Tanks (pp. 17-37), the section pertaining to SOxMI Reactor and Distillation (p. 40), the Section pertaining to Plastic Parts Coating (pp. 54-55).

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BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 102-0120; FRL-6220-2a]

Final Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on November 6, 1998. This limited approval and limited disapproval action will incorporate portions of Rules 1, 2 and 4 of Regulation 2—Permits, for the Bay Area Air Quality Management District (BAAQMD or the “District”) into the federally approved State Implementation Plan (SIP).

The intended effect of finalizing this limited approval and limited disapproval of these rules is to strengthen the federally approved SIP by incorporating these updated provisions and to satisfy Federal requirements for an approvable nonattainment area NSR SIP for the District.

Thus, EPA is finalizing simultaneous limited approval and limited disapproval as a revision into the California SIP under provisions of the

Act regarding EPA action on SIP submittals, and general rulemaking authority. While strengthening the SIP, this revision contains deficiencies which the BAAQMD must address before EPA can grant full approval under Section 110(k)(3).

DATES: This action is effective on February 25, 1999.

ADDRESSES: Copies of the state submittal and other supporting information used in developing the final action are available for public inspection (Docket Number CA102-0120) at EPA’s Region IX office during normal business hours and at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 “L” Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: John Walser, Permits Office [AIR-3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1257.

SUPPLEMENTARY INFORMATION:

I. Applicability

The following rules are being approved for limited approval and limited disapproval into the California SIP: District Regulation 2 Permits, Rule 1 General Requirements, Rule 2 New Source Review, and Rule 4 Emissions Banking. Rules 2 and 4 were submitted by the California Air Resources Board on behalf of the District to EPA on September 28, 1994. Rule 1 was submitted by the California Air Resources Board on behalf of the District to EPA on December 31, 1990.

II. Background

On November 6, 1998, in 63 FR 59924, EPA proposed limited approval and limited disapproval for BAAQMD Regulation 2 Permits, Rules 1, 2 and 4. The BAAQMD adopted Rule 1 on November 1, 1989, and Rules 2 and 4 on June 15, 1994. Submitted Rule 1 was found to be complete on February 28, 1991, and submitted Rules 2 and 4 were found to be complete on November 22, 1994,¹ pursuant to EPA’s completeness criteria that are set forth in 40 CFR Part 51, Appendix V.² These rules were

¹ The proposed action on November 6, 1998 mistakenly identified the submittal and completeness date for Rule 1 as the same date as Rules 2 and 4.

² EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

proposed for limited approval and limited disapproval. A detailed discussion of the background for these rules and EPA’s evaluation is provided in the November 6, 1998 Proposed Rulemaking Notice (NPRM) cited above.

III. Response to Comments

A 30 day public comment period was provided in 63 FR 59924. EPA received one public comment on the proposal from the California Council for Environmental and Economic Balance (CCEEB), and is responding to that comment in this document.

CCEEB commented that EPA should specifically exclude Section 2-4-304.3 of Regulation 2, Rule 4 from any final SIP approval of all or portions of Rule 4. Section 2-4-304.3 of Rule 4 states that “emission reduction credits may not be used to exempt a source from any other air pollution control requirements whatsoever of federal, State, or District laws, rules and regulations.” CCEEB is concerned that Section 2-4-304.3 addresses State law issues, and is not necessary to meet Federal Clean Air Act requirements. In addition, CCEEB commented that the California Health and Safety Code Section 39602 provides that the California SIP “shall include only those provisions necessary to meet the requirements of the Clean Air Act.”

Section 2-4-304.3 was not a section of Regulation 2, Rule 4 that EPA identified as a SIP-approvability issue in 63 FR 59924. As written, Section 2-4-304.3 of Rule 4 is not inconsistent with federal requirements or EPA policy and does not present any SIP-approvability issues. If CCEEB believes the language is inconsistent with state law, its remedy is at the state and local level. The District, if in agreement with CCEEB, would need to revise the rule and submit the rule modification to the California Air Resources Board as a SIP submittal. EPA does not have the authority to revise the rule language as requested, or exclude Section 2-4-304.3 from final SIP approval.

IV. EPA Evaluation and Final Action

BAAQMD Regulation 2 clarifies the terms and requirements that apply to the District’s NSR regulation and emissions banking program. BAAQMD Regulation 2 was originally adopted as part of BAAQMD’s effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. For EPA’s detailed evaluation of BAAQMD Regulation 2, Rules 1, 2 and 4, please refer to the NPRM at 63 FR 59924, November 6, 1998.

EPA has evaluated District Rules 1, 2 and 4 of Regulation 2 and has determined that the rules contain

deficiencies and are not fully consistent with CAA requirements, EPA regulations and EPA policy. Because these rule deficiencies are inappropriate for inclusion in the SIP, EPA cannot grant full approval of these rules under section 110(k)(3). Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA is granting final limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The final approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is finalizing limited approval of BAAQMD's submitted Regulation 2 under sections 110(k)(3) and 301(a) of the CAA.

It should be noted that the rules covered by this final rulemaking have been adopted by the BAAQMD, subsequently revised, and are currently in effect in the BAAQMD. EPA's final limited disapproval action does not prevent the BAAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Docket

Copies of Bay Area's submittal and other information relied upon for the final actions are contained in docket number CA102-0120 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

C. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental

Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995

("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

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

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 1999. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 4, 1999.

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)(182)(i)(B)(6) and (c)(199)(i)(A)(8) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(c) * * *
(182) * * *
(i) * * *
(B) * * *

(6) Regulation 2, Rule 1 adopted on November 1, 1989.

* * * * *

(199) * * *
(i) * * *
(A) * * *

(8) Regulation 2, Rule 2 and Rule 4 adopted on June 15, 1994.

* * * * *

[FR Doc. 99-1647 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD079-3035a; FRL-6218-2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOCs From the Manufacture of Explosives and Propellant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland.

This revision imposes reasonably available control technology (RACT) requirements for volatile organic compounds (VOCs) from sources that manufacture explosives and propellant. The intent of this action is to approve Maryland's request to amend its SIP to include RACT requirements to control VOCs from the manufacture of explosives and propellant.

DATES: This direct final rule is effective without further notice on March 29, 1999 unless by February 25, 1999, adverse or critical comments are received by EPA. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth at (215) 814-2183, or by e-mail at wentworth.paul@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above EPA Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28, 1998, the State of Maryland submitted a formal revision to its SIP, which consists of amendments to COMAR 26.11.19 *Control of Volatile Organic Compounds from Specific Processes*. The revision consists of the addition of a new regulation at COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* to establish RACT for VOCs from the manufacture of explosives and propellant. This revision was submitted to satisfy the requirements of sections 182 and 184 of the Clean Air Act to implement RACT on major sources of VOCs.

II. Summary of the SIP Revision

The new regulation COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* applies to sources which manufacture explosives and propellant. The carrier for some of the raw materials used in the manufacture of explosives and propellant and the medium in which those raw materials are mixed contain VOCs. The majority of the VOC emissions are from the mixing and drying operations. The only currently known existing source of VOC emissions from the manufacture of explosives and propellant is located at the Naval Surface Warfare Center in Indian Head, Maryland.

COMAR 26.11.19 *Control of Volatile Organic Compounds from Specific Processes* applies statewide as does COMAR 26.11.19.25. The specific provisions found in COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* are summarized below:

A. Applicability

This regulation applies to a person who owns or operates existing equipment at a premise that has a potential to emit 25 tons or more of VOC per year from all explosives and propellant manufacturing equipment at the premises.

It also applies to a person who constructs, owns, or operates new equipment that has or will have total actual VOC emissions of 50 pounds or more per day. It must be noted that the applicability provisions of COMAR 26.11.19.25 pertaining to new equipment are imposed in addition to any applicable new source review (NSR) permitting requirements of the Federal Clean Air Act and the Maryland SIP. These provisions of COMAR 26.11.19.25 do not replace any applicable NSR requirements.

B. Definitions

COMAR 26.11.19.25 includes definitions of the following terms: Existing equipment, Explosives and propellant manufacturing equipment, New equipment, and Nitramine propellant manufacturing equipment.

C. General Requirements

Pursuant to COMAR 26.11.19.25 (C)(1), a person who owns or operates existing explosives and propellant manufacturing equipment subject to this regulation shall: (a) Install a VOC control device, having a VOC destruction or removal efficiency of 85 percent or more overall, on all active

nitramine propellant mixing equipment that has a capacity of 150 gallons or more; (b) prepare and submit for approval by the Maryland Department of the Environment by not later than September 1, 1997, a good operating practices manual that when implemented will minimize VOC emissions from all other existing explosive, propellant, and nitramine propellant manufacturing equipment; and (c) implement the good operating practices within 30 days after approval by the Department.

Pursuant to COMAR 26.11.19.25(C)(2), a person who constructs, owns, or operates new equipment subject to this regulation shall reduce emissions from the new equipment by 85% or more, overall. It must be noted that these provisions of COMAR 26.11.19.25 pertaining to new equipment are imposed in addition to any applicable new source review (NSR) permitting requirements of the Federal Clean Air Act and the Maryland SIP. These provisions of COMAR 26.11.19.25 do not replace any applicable NSR requirements.

D. Reporting and Testing Requirements

A person who is subject to this regulation shall:

(1) By no later than October 1, 1997, submit to the Department:

(a) A VOC emissions inventory for calendar year 1990 and for each subsequent year through calendar year 1996 for all explosive and propellant manufacturing equipment at the premises, and

(b) Complete permit to construct application for the control device required in subsection C(1)(a) of the regulation;

(2) Not later than 90 days after the control device required in section C(1)(a) of this regulation has been installed must perform a stack test to demonstrate compliance with the requirements of subsection C of this regulation; and

(3) Submit to the Department a stack test report within 60 days after completing the test.

EPA has determined that the control requirements contained in these revisions to the subject rule constitutes an acceptable level of RACT on major sources manufacture explosives and propellants. EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision

should adverse or critical comments be filed. This rule will be effective March 29, 1999 without further notice unless by February 25, 1999, adverse or critical comments are received. If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 29, 1999 and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving the addition of COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* submitted by the State of Maryland on August 28, 1998 as a revision to the Maryland SIP.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities.

Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

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

D. Executive Order 13084

Under E.O. 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 EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal

governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* as a revision to the Maryland SIP must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 1999. 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, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: December 30, 1998.

Thomas Voltaggio,
Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(141) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *
(141) Revisions to the Maryland State Implementation Plan submitted on August 28, 1998 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of August 28, 1998 from the Maryland Department of the Environment transmitting revisions to COMAR 26.11.19 pertaining to the control of VOCs from special processes. The revision adds a new regulation at COMAR 26.11.19.25 for the control of VOC compounds from explosives and propellant manufacturing adopted by the Secretary of the Environment on July 15, 1997 and effective August 11, 1997.

(B) Revisions to COMAR 26.11.19 entitled *Volatile Organic Compounds from Specific Processes*: The addition of new regulation COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing*.

(ii) Additional Material: Remainder of August 28, 1998 Maryland State submittal pertaining to COMAR 26.11.19.25 to control VOCs from sources that manufacture explosives and propellants.

[FR Doc. 99-1762 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MO 043-1043(a); FRL-6220-1]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is promulgating a redesignation request and State Implementation Plan (SIP) revision submitted by the state of Missouri on June 13, 1997. Additional material was sent on June 15, 1998. The request is to redesignate the portion of the St. Louis metropolitan area, currently a carbon monoxide (CO) nonattainment area, to a CO attainment area. Under the Clean Air Act (CAA) as amended in 1990, a redesignation to attainment may be promulgated if the state demonstrates full compliance with the redesignation requirements set forth in section 107(d)(3)(E). In this action, the EPA is also approving Missouri's

SIP revision regarding the state's CO maintenance plan.

DATES: This direct final rule is effective on March 29, 1999 without further notice, unless the EPA receives adverse comment by February 25, 1999. If adverse comment is received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Stanley Walker, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stanley Walker at (913) 551-7494.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Redesignation Request

The CAA provides a process whereby a state may request the EPA to redesignate a nonattainment area to an attainment area for CO. As set forth in the CAA, an area must meet the requirements outlined in section 107(d)(3)(E). These requirements and the EPA's analysis of Missouri's submission as it relates to the requirements, are detailed in section II, below.

Missouri has submitted a redesignation based on ambient monitoring data showing no violation of the standard since 1987.

B. Summary of the SIP Revision

On June 13, 1997, the state submitted a maintenance plan and requested that the EPA redesignate the St. Louis metropolitan area from nonattainment to attainment for CO in accordance with the requirements of the CAA. On June 15, 1998, the state submitted additional material to further support Missouri's redesignation request. The St. Louis CO nonattainment area includes the city of St. Louis and the portion of St. Louis County encompassed by Interstate 270 and the Mississippi River.

II. Analysis of the Redesignation Request and Maintenance Plan

A. Attainment of the CO National Ambient Air Quality Standard (NAAQS) (Section 107(d)(3)(E)(i))

EPA Analysis

In accord with section 107(d)(3)(i) of the CAA, the state of Missouri showed that the area has attained, and continues to attain, the applicable NAAQS. Missouri used CO air quality data for the years 1994-1995 to form the basis of Missouri's request to redesignate St. Louis to attainment. Data collected in subsequent years confirm that no violations of the CO standard occurred and St. Louis continues to show attainment through 1998. The ambient air quality data are collected at ambient monitoring stations that are located in areas which are predicted to have high concentrations. These data are collected and quality assured in accordance with 40 CFR Part 58 and recorded in the Aerometric Information Retrieval System.

Criterion No. 1 has been met.

B. Fully Approved SIP Under Section 110(k) of the CAA (Section 107(d)(e)(ii))

The SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to the area.

EPA Analysis

As required, a CO SIP was submitted by the Missouri Department of Natural Resources (MDNR) prior to the 1990 CAA. This SIP was approved under the pre-1990 CAA Amendments. The St. Louis area was designated as an unclassified nonattainment area under the 1990 CAA Amendments. Since 1990, several revisions to Missouri's SIP which target CO emissions have been fully approved by the EPA under section 110(k) of the CAA. Please see the Technical Support Document for a listing of these additional regulations. Further discussion of how the Missouri SIP for St. Louis meets the requirements of section 110 and Part D can be found in Section II(D).

Criterion No. 2 has been met.

C. Permanent and Enforceable Improvement in Air Quality

As required, the State of Missouri attributes the improvement in air quality to regulations which are permanent and enforceable.

EPA Analysis

Missouri estimated that reductions have occurred from the year that the design value was determined for designation and classification. Most of

these reductions were achieved from Federal national programs and SIP measures. Specifically, reductions occurred due to the Federal Motor Vehicle Control Program and National Emission Standards for nonroad engines. In addition, the permanence of the reductions is evidenced by the fact that no violations have occurred since 1988.

The EPA finds that the measures have resulted in permanent and enforceable CO emission reductions that have allowed St. Louis to attain the NAAQS.

Criterion No. 3 has been met.

D. Applicable Requirements Under Section 110 and Part D

Section 110(a)(2) and Part D requirements must be met prior to approval of the redesignation request. In general, the EPA evaluates the state's compliance with requirements that come due under the Act prior to the submittal of a complete redesignation request. Areas, such as St. Louis, that are unclassified, are subject to the provisions of subpart 1 of Part D. The EPA has reviewed the SIP to ensure that it contains all requirements of section 110(a)(2) and subpart 1 of Part D.

Section 110 Requirements

The EPA has analyzed the SIP and determined that it is consistent with the requirements as amended in section 110(a)(2) of the Act. The SIP revisions relevant to CO were adopted by the Missouri Air Conservation Commission after reasonable notice and public hearing. The SIP contains enforceable emission limitations adequate to produce attainment, and requires monitoring, compiling, and analyzing ambient air quality data. The SIP also provides for adequate funding, staff, and associated resources necessary to implement SIP requirements and has provisions for review of new sources, and requires stationary source emissions monitoring and reporting.

Part D Requirements

Under Part D, an area's classification determines the requirements to which it is subject. Subpart 1 of Part D sets forth the basic requirements applicable to all nonattainment areas. The requirements for CO areas in Subpart 3 are applicable to CO areas in the moderate and serious classifications. The St. Louis area is an unclassified nonattainment area, and the applicable Part D requirements are in subpart 1 of Part D.

Subpart 1 of Part D—Section 172(c) Plan Provisions

The most relevant subpart 1 requirements are in section 172(c).

These requirements include reasonably available control technology for existing sources, a new source review (NSR) program meeting the requirements of section 173, reasonable further progress (RFP) toward attainment of the applicable standard, an emission inventory of sources of the relevant pollutant, other measures as necessary for attainment, and a demonstration of attainment by the applicable attainment date. In the case of St. Louis, the state has satisfied all of the section 172(c) requirements necessary for redesignation.

Since St. Louis was subject to nonattainment plan requirements prior to the 1990 Amendments, many of the subpart 1 requirements had already been met. The requirements for RFP, identification of certain emission increases, and other measures needed for attainment have already been met, and there have been no violations of the NAAQS since 1987. In addition, the state already had reasonably available control technology (RACT) for major sources, and no new RACT requirements were triggered for unclassified areas. With respect to the section 172(c)(2) RFP requirements, since St. Louis has attained the CO NAAQS, no new RFP requirements apply.

The section 172(c)(3) emissions inventory requirements have been met by the inventory included in the maintenance plan. See discussion in section E of this document.

Section 172(c)(4) requires the state to demonstrate to the satisfaction of the Administrator that emissions quantified for the purpose of growth factors will be consistent with the achievement of RFP, and will not interfere with attainment of the applicable NAAQS by the attainment date. In the maintenance plan, the state demonstrates continued attainment through the year 2008. Growth factors were included in the state's analysis.

As for the section 172(c)(5) new source permitting requirements, the state revised its rule to meet the requirements of section 173 of the Act, and the EPA approved the revisions. (See 40 CFR section 52.1320(86).)

The state will maintain an ambient monitoring network to ensure that the NAAQS continues to be met.

As discussed in section 172(c), the state provides a discussion of its contingency measures in section E.5 pertaining to maintenance plans. The area has met its RFP requirements and attained the standard before the attainment date. In accord with the EPA's "Technical Support Document to Aid States with the Development of

Carbon Monoxide State Implementation Plan," nonclassified CO areas such as St. Louis are not required to have contingency measures as defined under 172(c). The EPA believes it is appropriate not to apply the requirement for contingency measures for areas under the de minimis approach.

Criterion No. 4 has been met.

E. Approved Limited Maintenance Plan

Section 107(d)(3)(E)(iv) states that an area must have a maintenance plan meeting the requirements of section 175A.

1. Limited Maintenance Plan Option

The EPA provided national guidance regarding the Limited Maintenance Plan option in an October 6, 1995, memorandum from Joseph W. Paisie, Group Leader, Integrated Policy and Strategies Group, to Air Branch Chief, entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas." In accord with the aforementioned memorandum, the CO design value for the area, based on eight consecutive quarters (two years of data) used to demonstrate attainment, must be at or below 7.65 parts per million (ppm) (85 percent of the exceedance levels of the CO NAAQS). In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. To assess whether an unclassified area meets the applicability cutoff for the limited maintenance plan, a separate design value must be developed for every monitoring site. If the area design value is at or below 7.65 ppm, the state may select the limited maintenance plan option for the first ten-year maintenance period under section 175A. As discussed below, the design value for the St. Louis CO nonattainment area is below 7.65 ppm, qualifying it for the limited maintenance plan option.

2. Attainment Inventory

The maintenance plan contains a comprehensive emissions inventory of CO emissions for the years 1994 to 1995 which establishes the amount of emission reductions that were necessary to reach attainment with the CO NAAQS.

The state developed an attainment emissions inventory to identify a level of emissions in the area which are sufficient to attain the NAAQS. This inventory is consistent with the EPA's most recent guidance on emissions inventories for nonattainment areas and represents emissions during the time period associated with the monitoring

data showing attainment. The inventory is based on actual "typical winter day" (tpwd) emissions of CO.

A baseline inventory for the year 1993 was used versus 1990 baseline because the state believed the 1993 base year was a better approximation of actual emissions. The emission inventory contains attainment year inventories for 1993 through April 1998 and projected inventories for 1998 through 2008 for the maintenance period. The inventories include point, area, on-road mobile, and nonroad mobile source categories; growth projections; action line determination; emission projection methodologies; and sample calculations for point and area sources. The highway mobile source inventory information includes vehicle miles traveled (VMT) growth projections, and Mobile 5.0 model inputs and outputs.

The state has met the required inventory criterion.

3. Demonstration of Maintenance of the CO NAAQS

The Maintenance Demonstration. The maintenance demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (7.65 ppm or 85 percent of the CO NAAQS). There is no requirement to project emissions over the maintenance period. The EPA believes if the area begins the maintenance period at or below 85 percent of exceedance levels, the air quality along with the continued applicability of prevention of significant deterioration or NSR requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial ten-year maintenance period.

EPA Evaluation. Total CO emissions were projected from 1993 through the year 2008. Using the 1994 and 1995 monitoring, the state calculated a design value of 5.7 ppm which is well below the design value for attainment. All emissions are reported in tpwd.

Missouri demonstrated that emissions for CO through the year 2008 will remain below the 1993 base year levels because of permanent and enforceable measures, while allowing for growth in population and VMT.

a. Monitoring Network/Verification of Continued Attainment. As required under the limited maintenance plan option, Missouri verified the attainment status of the area over the maintenance period; the maintenance plan contains provisions for continued operation of an appropriate EPA approved air quality

monitoring network, in accordance with 40 CFR Part 58.

b. Contingency Plan. Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The contingency plan is considered to be an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once they are triggered by a specific event. The contingency plan should identify the measures to be promptly adopted and provide a schedule and procedure for adoption and implementation of the measures. The state should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented.

Missouri meets the above requirement by committing to expeditiously implement contingency provisions in response to future emission increases in CO emissions or violation of the CO emission standards. Missouri has identified an action line which would trigger contingency controls for the scenario with no recorded violations of the CO NAAQS. Also, the state requires additional CO controls for future year emissions that exceed the contingency action line.

c. Conformity Determination Under Limited Maintenance Plans. The transportation conformity rule (58 FR 62188; November 24, 1993) and the general conformity rule (58 FR 63214; November 30, 1993) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the initial maintenance period, because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result. Therefore, in areas with approved limited maintenance plans, Federal actions requiring conformity determinations under the transportation conformity rule could be considered to satisfy the necessary requirements. Similarly, in these areas, Federal actions subject to the general conformity rule could be considered to satisfy the requirements specified in section 93.158(a)(5)(i)(A) of the rule.

As required by section 176 of the CAAA, MDNR has developed

transportation/air quality conformity procedures (10 CSR 10-5.480) and general conformity procedures (10 CSR 10-6.300) that are consistent with Federal conformity regulations. The state demonstrates conformity of Federal actions by indicating that expected emissions from the planned actions are consistent with the emissions budget for the area. As discussed above, the state meets the emissions budget criteria as required.

III. Final Action

The EPA is taking action to approve the St. Louis area maintenance plan because it meets the requirements set forth in section 175(A) in the CAA and in the aforementioned memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas." In addition, the Agency is approving the state of Missouri's request to redesignate the St. Louis CO area to attainment, because Missouri has demonstrated compliance with section 107(d)(3)(E) for redesignation.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective March 29, 1999 without further notice unless the Agency receives relevant adverse comments by February 25, 1999.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 29, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, the EPA

may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, the EPA may not issue a regulation that is not required by statute, that significantly 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, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the 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, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

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 March 29, 1999. 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, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

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

Dated: January 7, 1999.

William Rice,

Acting Regional Administrator, Region VII.

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 AA—Missouri

2. Subpart AA is amended by adding § 52.1340 to read as follows:

* * * * *

§ 52.1340 Control strategy: Carbon monoxide.

Approval—A maintenance plan and redesignation request for the St. Louis,

Missouri, area was submitted by the Director of the Missouri Department of Natural Resources on June 13, 1997. Additional information was received on June 15, 1998. The maintenance plan and redesignation request satisfy all applicable requirements of the Clean Air Act.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. In § 81.326 the table for Missouri carbon monoxide is revised to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
St. Louis Area:				
St. Louis City		Attainment.		
St. Louis County (part):				
The area encompassed by the I-270 and the, Mississippi River..		Attainment.		
AQCR 137 Northern Missouri Intrastate:				
Pike County		Unclassifiable/Attainment.		
Ralls County		Unclassifiable/Attainment.		
AQCR 137 Northern Missouri Intrastate (Remainder of)		Unclassifiable/Attainment.		
Adair County				
Andrew County				
Atchison County				
Audrain County				
Boone County				
Caldwell County				
Callaway County				
Carroll County				
Chariton County				
Clark County				
Clinton County				
Cole County				
Cooper County				
Daviess County				
De Kalb County				
Gentry County				
Grundy County				
Harrison County				
Holt County				
Howard County				
Knox County				
Lewis County				
Lincoln County				
Linn County				
Livingston County				
Macon County				
Marion County				
Mercer County				
Moniteau County				
Monroe County				
Montgomery County				
Nodaway County				
Osage County				
Putnam County				
Randolph County				
Saline County				

MISSOURI—CARBON MONOXIDE—Continued

Designated Area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Schuyler County				
Scotland County				
Shelby County				
Sullivan County				
Warren County				
Worth County				
Rest of State		Unclassifiable/Attainment.		
Barry County				
Barton County				
Bates County				
Benton County				
Bollinger County				
Buchanan County				
Butler County				
Camden County				
Cape Girardeau County				
Carter County				
Cass County				
Cedar County				
Christina County				
Clay County				
Crawford County				
Dade County				
Dallas County				
Dent County				
Douglas County				
Dunklin County				
Franklin County				
Gasconade County				
Greene County				
Henry County				
Hickory County				
Howell County				
Iron County				
Jackson County				
Jasper County				
Jefferson County				
Johnson County				
Laclede County				
Lafayette County				
Lawrence County				
Madison County				
Maries County				
McDonald County				
Miller County				
Mississippi County				
Morgan County				
New Madrid County				
Newton County				
Oregon County				
Ozark County				
Pemiscot County				
Perry County				
Pettis County				
Phelps County				
Platte County				
Polk County				
Pulaski County				
Ray County				
Reynolds County				
Ripley County				
Scott County				
Shannon County				
St. Charles County				
St. Clair County				
St. Francis County				
St. Louis County (part) Remainder of County				
Ste. Genevieve County				
Stoddard County				
Stone County				

MISSOURI—CARBON MONOXIDE—Continued

Designated Area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Taney County Texas County Vernon County Washington County Wayne County Webster County Wright County				

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

[FR Doc. 99-1332 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-6224-6]

RIN 2060-AG12

Protection of Stratospheric Ozone: Listing MT-31 as an Unacceptable Refrigerant Under EPA's Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: With this action, EPA's Significant New Alternatives Policy (SNAP) program lists as unacceptable for all refrigeration and air-conditioning end-uses the refrigerant blend known by the trade name MT-31. This refrigerant blend was previously listed as an acceptable substitute for CFC-12 and HCFC-22 in various end-uses within the refrigerant and air-conditioning sector. After June 3, 1997, the date on which EPA published the Notice of Acceptability that listed MT-31 as acceptable, EPA became aware of toxicity data concerning one of the chemicals contained in the MT-31 blend that present significant concerns about risks to human health that may arise as a result of the use of this chemical, either alone or in a blend, in the refrigeration and air-conditioning sector. Today, therefore, EPA is removing MT-31 from the list of acceptable substitutes, and is listing MT-31 as unacceptable in all refrigeration and air-conditioning end-uses.

DATES: *Effective Date:* This action is effective January 26, 1999. *Comments:* EPA will consider all written comments received by February 25, 1999 to

determine whether any change to this action is necessary.

ADDRESSES: Information relevant to this notice is contained in Air Docket A-91-42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260-7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Kelly Davis, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, S.W., Washington, DC 20460, (Docket # A-91-42), (202)-564-2303.

FOR FURTHER INFORMATION CONTACT: Kelly Davis, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, S.W., Washington, DC, 20460, (202)-564-2303 or electronically at davis.kelly@epa.gov. General information about EPA's SNAP program can be found by calling EPA's Stratospheric Ozone Protection Hotline at (800) 296-1996 or by viewing EPA's SNAP Program world wide web site at www.epa.gov/ozone/title6/snap/snap.html.

SUPPLEMENTARY INFORMATION:

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IV. Additional Information

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into

interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History Background

On March 18, 1994, EPA published the Final SNAP Rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

C. Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make under the SNAP program. The Agency

has identified five possible decision categories: acceptable, acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Acceptable substitutes can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ozone-depleting substitute with a substitute listed by SNAP as unacceptable for that end-use. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Such substitutes are described as "acceptable subject to use conditions." Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

As described in the Final SNAP Rule, EPA does not believe that rulemaking procedures are required to list alternatives that are determined to be acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA periodically adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending

lists are published in separate Notices in the **Federal Register**.

Also as described in the Final SNAP Rule, EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes. In this interim final rule, however, EPA is removing an alternative from lists of acceptable substitutes for CFC-12 and HCFC-22 refrigerants, and is listing MT-31 as unacceptable in all refrigeration and air-conditioning end-uses, without prior notice and comment. The reasons for the Agency's decision to do so in an interim final rule rather than in a notice-and-comment rulemaking are discussed in section D below.

D. Necessity for Interim Final Rule

Section 307(d)(3) of the Clean Air Act (CAA or the Act) states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register**. The promulgation or revision of regulations under Title VI of the CAA (relating to stratospheric ozone protection) is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq.

APA section 553(b) requires that any rule to which it applies be issued only after the public has received notice of, and an opportunity to comment on, the rule. However, APA section 553(b)(B) exempts from those requirements any rule for which the issuing agency for good cause finds that providing prior notice-and-comment would be impracticable, unnecessary or contrary to the public interest. Thus, any rule for which EPA makes such a finding is exempt from the notice-and-comment requirements of both APA section 553(b) and CAA section 307(d).

EPA believes that the circumstances presented here provide good cause to take the actions set forth in this final rule without prior notice and comment, since providing prior notice and comment would be impracticable and contrary to the public interest. Specifically, EPA is concerned about health risks to workers associated with the use in replacement refrigerant formulations of one of the chemicals found in MT-31, in light of toxicity data regarding this chemical. EPA became aware of these data only after the Agency listed MT-31 as an acceptable

replacement refrigerant. Due to the fact that the manufacturer of MT-31 has claimed confidentiality with respect to the chemical composition of MT-31, EPA is unable to identify in this interim final rule which chemical in MT-31 is the subject of the Agency's concerns.

The toxicity data indicate that typical worker exposure levels for the MT-31 chemical exceed minimal levels of concern for noncancer risks. Exposures to this chemical have been shown to lead to kidney damage. The Agency has conducted an exposure analysis to determine probable exposure concentrations of MT-31 in occupational settings. The Agency has determined that when this chemical is used as a refrigerant or as a component in a refrigerant blend, persons who manufacture, service or dispose of refrigeration and air-conditioning equipment that contains MT-31 may be exposed to levels of this chemical that put them at risk of kidney damage, particularly if they have not been specifically trained in the handling of this chemical or of blends containing this chemical. The Agency, moreover, is aware that MT-31 is currently commercially available, and is being used as a refrigerant, in multiple end-uses (e.g., airport air-conditioning systems, ice machines and bus air-conditioning), in multiple commercial locations throughout the nation. EPA believes that persons servicing or disposing of the refrigeration and air-conditioning units in these locations are subject to a real threat of exposure and consequently, to an actual and immediate health risk. Therefore, the Agency believes that good cause exists to take the actions set forth in this final rule without prior notice and comment.

As stated in section 612(c) of the Act, one of the Agency's objectives in implementing the SNAP program is to promulgate rules making it unlawful to replace any class I or class II substance with any substitute that EPA determines may present adverse effects to human health or the environment. The Agency believes that the chemical composition of MT-31 presents an unacceptable risk to human health, and that immediate action by EPA is necessary in order to avoid any resulting harm. The use of MT-31 in the refrigeration and air-conditioning sector will come to a halt most quickly through the publication of this interim final rule. In addition, this action, combined with Agency outreach and communication efforts, should provide any current or potential users of MT-31 with immediate notice that EPA does not consider MT-31 to be an appropriate compound to use in the refrigeration and air-conditioning sector,

and that potential health risks are associated with exposure to MT-31 during the manufacture and servicing of any refrigeration and air-conditioning equipment that contains MT-31. A full notice-and-comment rulemaking would defeat the regulatory objective of the SNAP program to fully ensure protection of human health.

Nonetheless, EPA is providing 30 days for submission of public comments following today's action. EPA will consider all written comments submitted in the allotted time period to determine if any change to this action is necessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, APA section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. Since EPA has determined that good cause exists to remove MT-31 from the lists of replacement refrigerants acceptable under the SNAP program, and list it instead as unacceptable as a replacement refrigerant, EPA is making this action immediately effective in order to ensure the fullest protection of human health.

II. Listing of MT-31 as Unacceptable

EPA originally listed MT-31 as an acceptable replacement refrigerant in a Notice of Acceptability published at 62 FR 30275 on June 3, 1997. In that Notice, EPA specifically listed MT-31 as acceptable as a substitute for CFC-12 in the following retrofitted and new systems:

- Centrifugal and Reciprocating Chillers
- Industrial Process Refrigeration
- Cold Storage Warehouses
- Refrigerated Transport
- Retail Food Refrigeration
- Vending Machines
- Water Coolers
- Commercial Ice Machines
- Household Refrigerators
- Household Freezers

and as a substitute for HCFC-22 in all retrofitted end-uses. EPA stated in the Notice that "[t]his blend does not contain any flammable components, and all components are low in toxicity."

As noted above, however, in light of information recently reviewed by EPA concerning the toxicity of one of the chemicals contained in MT-31, EPA now is greatly concerned about this chemical in replacement refrigerant formulations. Due to the fact that the manufacturer of MT-31 has claimed confidentiality with respect to the

chemical composition of MT-31, EPA is unable to identify in this interim final rule which chemical is the subject of the Agency's concerns.

EPA has completed a risk screen for this chemical which indicates that the use of MT-31 in the refrigeration and air-conditioning end-uses listed above is unacceptable because of the significant health concerns associated with these uses of the chemical contained in MT-31. (Note that a risk screen for the components of MT-31 is not located in the docket because the manufacturer of MT-31 has claimed confidentiality with respect to the chemical composition of MT-31.) In particular, EPA's risk screen indicates that MT-31 will pose a risk to anyone exposed to the chemical during the manufacture or servicing of refrigeration or air-conditioning equipment that uses refrigerant that contains this chemical. Because of the extremely low occupational exposure limit for the chemical, and the fact that worker exposure levels for the chemical were predicted to be above levels of concern for noncancer risks, this chemical, and therefore MT-31, should not be used in the refrigeration and air conditioning sector. It should be noted that today's determination has no bearing on the use of MT-31 other than as a replacement for a class I or class II substance in the refrigeration and air-conditioning sector. Other industrial sectors may have safeguards in place to protect against worker exposure to MT-31. Based on the review of the available toxicity information related to this chemical, and the results of the EPA risk screen, EPA is today listing MT-31 as unacceptable for all refrigeration and air-conditioning end-uses, whether as a substitute for a class I substance such as CFC-12, or as a substitute for a class II substance such as HCFC-22.

III. Summary of Supporting Analyses

A. Unfunded Mandates Reform Act and Regulatory Flexibility Act

Since this action is not subject to notice-and-comment rulemaking requirements under the APA or any other law, it is also not subject to sections 202, 204 or 205 of the Unfunded Mandates Reform Act (UMRA). In addition, since this action does not impose annual costs of \$100 million or more on small governments or uniquely affect small governments, the Agency has no obligations under section 203 of UMRA. Moreover, since this action is not subject to notice-and-comment requirements under the APA or any other statute as stated above, it is not subject to section 603 or 604 of the Regulatory Flexibility Act.

B. Executive Order 12866: Review of Significant Regulatory Actions by OMB

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this rule is not a "significant regulatory action" within the meaning of the Executive Order.

C. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). The OMB Control Numbers are 2060–0226 and 2060–0350.

D. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior

consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate upon any State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Executive Order 13045: Children's Health Protection

This final rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's

prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), § 12(d), Pub. L. 104–113, requires federal agencies and departments to use the technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

IV. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m., Eastern Time.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rule published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rules published under the SNAP program, as well as EPA publications on protection of atmospheric ozone, are available from EPA's Ozone World Wide Web site at <http://www.epa.gov/ozone/>

title6/snap, and from the Stratospheric Protection Hotline number listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 19, 1999.

Carol M. Browner,
Administrator.

40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

2. Subpart G is amended by adding Appendix E to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix E to Subpart G—Unacceptable Substitutes Listed in the January 26, 1999 Final Rule, Effective January 26, 1999

REFRIGERATION AND AIR-CONDITIONING SECTOR UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
All refrigeration and air-conditioning end uses	MT-31	Unacceptable	Chemical contained in this blend presents unacceptable toxicity risk.

[FR Doc. 99–1764 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6224–7]

RIN 2060–AG12

Protection of Stratospheric Ozone: Listing Hexafluoropropylene (HFP) and HFP-Containing Blends as Unacceptable Refrigerants Under EPA's Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: With this action, EPA's Significant New Alternatives Policy (SNAP) program lists as unacceptable for all refrigeration and air-conditioning end-uses hexafluoropropylene (HFP) and any blend containing HFP. Today's action responds to EPA's recent discovery of toxicity data concerning HFP, which present significant concerns about risks to human health that may arise as a result of exposure to HFP, either as a single chemical or in a blend, in the refrigeration and air-conditioning sector. Therefore, EPA is listing HFP and all HFP-containing blends as unacceptable substitutes for CFC–12 and HCFC–22 in this sector.

DATES: *Effective Date:* This action is effective January 26, 1999. *Comments:* EPA will consider all written comments received by February 25, 1999 to determine if any change to this action is necessary.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Kelly Davis, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, S.W., Washington, DC 20460, (Docket # A–91–42), (202)–564–2303.

FOR FURTHER INFORMATION CONTACT: Kelly Davis, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, S.W., Washington, DC, 20460, (202)–564–2303 or electronically at davis.kelly@epa.gov. General information about EPA's SNAP program can be found by calling EPA's Stratospheric Ozone Protection Hotline at (800) 296–1996 or by viewing EPA's SNAP Program world wide web site at www.epa.gov/ozone/title6/snap/snap.html.

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I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- **Rulemaking**—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

- **Listing of Unacceptable/Acceptable Substitutes**—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History Background

On March 18, 1994, EPA published the Final SNAP Rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or

end-users when they are responsible for introducing a substitute into commerce.

C. Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make under the SNAP program. The Agency has identified five possible decision categories: acceptable, acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Acceptable substitutes can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ozone-depleting substitute with a substitute listed by SNAP as unacceptable for that end-use. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Such substitutes are described as "acceptable subject to use conditions." Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses

which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

As described in the Final SNAP Rule, EPA does not believe that rulemaking procedures are required to list alternatives that are determined to be acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA periodically adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published in separate Notices in the **Federal Register**.

Also as described in the Final SNAP Rule, EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes. In this interim final rule, however, EPA is listing HFP and HFP-containing blends as unacceptable in all refrigeration and air-conditioning end-uses, without prior notice and comment. The reasons for the Agency's decision to do so in an interim final rule rather than in a notice-and-comment rulemaking are discussed in section D below.

D. Necessity for Interim Final Rule

Section 307(d)(3) of the Clean Air Act (CAA or the Act) states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register**. The promulgation or revision of regulations under Title VI of the CAA (relating to stratospheric ozone protection) is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraph (A) or (B) of section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq.

APA section 553(b) requires that any rule to which it applies be issued only after the public has received notice of, and an opportunity to comment on, the rule. However, APA section 553(b)(B) exempts from those requirements any rule for which the issuing agency for good cause finds that providing prior notice-and-comment would be impracticable, unnecessary or contrary to the public interest. Thus, any rule for which EPA makes such a finding is exempt from the notice-and-comment requirements of both APA section 553(b) and CAA section 307(d).

EPA believes that the circumstances presented here provide good cause to

take the actions set forth in this final rule without prior notice and comment, since providing prior notice and comment would be impracticable and contrary to the public interest. Specifically, EPA is concerned about health risks to workers associated with the use of HFP in replacement refrigerant formulations, in light of recently reviewed toxicity data concerning HFP. The data indicate that typical worker exposure levels for HFP are above minimal levels of concern for noncancer risks. Exposures to HFP have been shown to lead to kidney damage. As a result, when HFP is used as a refrigerant or as a component in a refrigerant blend, there is a significant chance that persons who manufacture, service or dispose of refrigeration and air-conditioning equipment that contains HFP or an HFP blend may be exposed to levels that put them at risk of kidney damage, particularly if they have not been specifically trained in the handling of HFP or of blends containing HFP. Moreover, since HFP has not historically been used in refrigeration equipment, refrigerant technicians generally are not trained to handle HFP or HFP blends. Thus, any persons servicing or disposing of refrigeration and air-conditioning units that use an HFP-containing blend would be subject to an actual and immediate health risk. The Agency believes that there is a real threat of exposure.

Several parties have made submissions of HFP-containing refrigerants under the SNAP program and the 90-day prohibition on marketing has expired. Thus, EPA is concerned that refrigerant blends that contain HFP may currently be commercially available and in actual use around the nation. As a consequence, the Agency believes that good cause exists to take the actions set forth in this final rule without prior notice and comment in order to mitigate the risk of exposure to this toxic substance.

As stated in section 612 of the Act, one of the Agency's objectives in implementing the SNAP program is to promulgate rules making it unlawful to replace any class I or class II substance with any substitute that EPA determines may present adverse effects to human health or the environment. The Agency believes that HFP and HFP-containing blends present an unacceptable risk to human health, and that immediate action by EPA is necessary in order to mitigate any resulting harm. The use of HFP in the refrigeration and air-conditioning sector will come to a halt most quickly through the publication of this interim final rule. In addition, this action, combined with Agency outreach

and communication efforts, should provide any current or potential users of HFP or HFP-containing blends with immediate notice that EPA does not consider HFP to be an appropriate compound to use in the refrigeration and air-conditioning sector and that potential health risks are associated with exposure to HFP during the manufacture and servicing of any refrigeration and air-conditioning equipment that contains HFP. A full notice-and-comment rulemaking would defeat the regulatory objective of the SNAP program to fully ensure protection of human health.

Nonetheless, EPA is providing 30 days for submission of public comments following today's action. EPA will consider all written comments submitted in the allotted time period to determine if any change to this action is necessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, APA section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. Since EPA has determined that good cause exists to list HFP and HFP-containing blends as unacceptable as a replacement refrigerant, EPA is making this action immediately effective in order to ensure the fullest protection of human health.

II. Listing of HFP and HFP-Containing Blends as Unacceptable

As noted above, in light of information recently reviewed by EPA concerning the toxicity of HFP, EPA is greatly concerned about the use of HFP in replacement refrigerant formulations. EPA has completed an HFP risk screen, a copy of which is available in the docket, which indicates that its use as a refrigerant or in refrigerant blends will pose an unacceptable risk to anyone exposed to HFP during the manufacture or servicing of refrigeration or air-conditioning equipment that contains HFP or an HFP-containing blend. Because of the extremely low occupational exposure limit for HFP, and the fact that worker exposure levels for HFP were predicted to be above levels of concern for noncancer risks, HFP should not be used in the refrigeration and air conditioning sector. It should be noted that today's determination has no bearing on the use of HFP or any blend that contains HFP, other than as a replacement for a class I or class II substance in the refrigeration and air-conditioning sector. Other industrial sectors may have safeguards

in place to protect against worker exposure to HFP. Based on the review of the available toxicity information related to HFP, and the results of the EPA risk screen, EPA is today listing HFP and all HFP-containing blends as unacceptable for all refrigeration and air-conditioning end-uses, whether as substitutes for a class I substance such as CFC-12, or as substitutes for a class II substance such as HCFC-22.

III. Summary of Supporting Analyses

A. Unfunded Mandates Reform Act and Regulatory Flexibility Act

Since this action is not subject to notice-and-comment rulemaking requirements under the APA or any other law, it is also not subject to sections 202, 204 or 205 of the Unfunded Mandates Reform Act (UMRA). In addition, since this action does not impose annual costs of \$100 million or more on small governments or uniquely affect small governments, the Agency has no obligations under section 203 of UMRA. Moreover, since this action is not subject to notice-and-comment requirements under the APA or any other statute as stated above, it is not subject to section 603 or 604 of the Regulatory Flexibility Act.

B. Executive Order 12866: Review of Significant Regulatory Actions by OMB

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this rule is not a "significant regulatory action" within the meaning of the Executive Order.

C. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). The OMB Control Numbers are 2060–0226 and 2060–0350.

D. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate upon any State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is

not a "major rule" as defined by 5 U.S.C. 804(2).

F. Executive Order 13045: Children's Health Protection

This final rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

G. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), § 12(d), Pub. L. 104–113, requires federal agencies and departments to use the technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies

and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

IV. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m., Eastern Time.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rule published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rules published under the SNAP program, as well as EPA publications on protection of atmospheric ozone, are available from EPA's Ozone World Wide Web site at <http://www.epa.gov/ozone/title6/snap>, and from the Stratospheric Protection Hotline number listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 19, 1999.

Carol M. Browner,
Administrator.

40 CFR Part 82 is to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

2. Subpart G is amended by adding Appendix F to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

**Appendix F to Subpart G—
Unacceptable Substitutes Listed in the
January 26, 1999 Final Rule, Effective
January 26, 1999**

REFRIGERATION AND AIR-CONDITIONING SECTOR UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
All refrigeration and air-conditioning end uses	Hexafluoropropylene (HFP) and all HFP-containing blends.	Unacceptable	Presents unacceptable toxicity risk.

[FR Doc. 99-1765 Filed 1-25-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 261**

[SW-FRL-6223-5]

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) today is granting a petition submitted by American Steel Cord, formerly Kokoku Steel Cord Corporation, to exclude (or "delist") certain solid wastes from the lists of hazardous wastes contained in Title 40 of the Code of Federal Regulations, Subpart D of Part 261. EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. This exclusion applies only to the wastewater treatment plant (WWTP) sludge generated by American Steel Cord in Scottsburg, Indiana. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill.

EFFECTIVE DATE: January 26, 1999.

ADDRESSES: The regulatory docket for this final rule which contains the complete petition and supporting documents is located at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590, and is available for viewing from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Call Judy Kleiman at (312) 886-1482 for appointments. The public may copy material from the regulatory docket at cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Judy Kleiman at the address above or at (312) 886-1842.

SUPPLEMENTARY INFORMATION:**I. Background****A. Authority**

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in Subpart D of Part 261. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 266, 268 and 273; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "facility-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information 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, where there is 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, the Administrator must determine that such factors do not warrant retaining the waste as a hazardous waste.

B. History of this Rulemaking

American Steel Cord petitioned EPA to exclude its WWTP sludge from hazardous waste control. After evaluating the petition, on April 15, 1998, EPA proposed to exclude American Steel Cord's waste from the lists of hazardous wastes in subpart D of part 261 (see 63 FR 18354). This rulemaking addresses the public comments received on the proposal and finalizes the proposed decision to grant American Steel Cord's petition.

II. Disposition of Delisting Petition

American Steel Cord, Route 1 Box 357K, Scottsburg, Indiana 47170

A. Proposed Exclusion

American Steel Cord petitioned EPA to exclude an annual volume of 3,000 cubic yards of WWTP filtercake sludge from the list of hazardous wastes contained in § 261.31, and subsequently provided additional information to complete its petition. The WWTP sludge is listed as EPA Hazardous Waste No. F006. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel

and cyanide (complexed) (see Appendix VII of part 261).

In support of its petition, American Steel Cord submitted detailed descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, and analytical testing results for representative samples of the petitioned waste, including (1) the hazardous characteristics of corrosivity, reactivity, and toxicity; (2) total constituent analysis and Toxicity Characteristic Leaching Procedure (SW-846 Method 1311) analyses for the eight toxicity characteristic metals listed in § 261.24, plus copper, nickel, thallium, vanadium, and zinc; (3) total constituent and Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) analyses for 121 volatile and semi-volatile organic compounds; (4) analyses for total sulfide, total cyanide, and TCLP analysis for cyanide; and (5) analysis for oil and grease.

EPA evaluated the information and analytical data provided by American Steel Cord and tentatively determined that American Steel Cord had successfully demonstrated that the petitioned waste is not hazardous. See the proposed exclusion (63 FR 18354; April 15, 1998) for a detailed explanation of EPA's evaluation.

B. Response to Comments

EPA received public comment on the April 15, 1998 proposal from American Steel Cord and from the Environmental Defense Fund.

Comment: American Steel Cord commented that its waste is measured by weight, not by volume, and that the Agency was incorrect in assuming a density of one when converting from tons to cubic yards. The density of the waste is considerably less than one, so that the petitioned waste was more than 950 yd³. Furthermore, American Steel Cord anticipates that the total annual volume of waste generated could increase to 3,000 cubic yards and requested that the exclusion be applied to this larger volume.

Response: The volume specified in today's final rule has been increased to 3,000 cubic yards from the 950 cubic yards proposed on April 15, 1998. In so doing, the final allowable levels for each constituent have been decreased from

the proposed levels in accordance with the CML model.

Comment: Commenter stated that the waste was only evaluated for risk under the scenario of mismanagement in a landfill, but the proposed delisting does not contain language limiting management of the delisted waste to disposal in a Subtitle D landfill.

Response: The Agency has recently adopted the policy that new delistings apply only to wastes managed in the type of unit modeled in the delisting risk assessment. In accordance with this policy, enforceable language has been incorporated into the final rule stating that this exclusion applies only if the waste is disposed in a Subtitle D landfill permitted by the State.

Comment: Commenter stated that there is no discussion of the possibility that the leachability might be underestimated by the TCLP or that this procedure may be affected by the iron content or other attributes of the waste such as pH.

Response: Although no laboratory test can exactly replicate environmental conditions for all landfills, the Agency has developed the TCLP to be used as a reasonable means of predicting leachability in a solid waste landfill. For wastes with close to neutral pH, such as the filtercake from American Steel Cord which has a pH between 8.5 and 8.9, the Agency believes that the TCLP is a reliable test in the absence of extreme environmental conditions. While some forms of iron may affect the leachability of lead bearing wastes, lead is not used in American Steel Cord's process and there is no significant amount of lead in the waste. Furthermore, there is no reason to believe that excess iron was introduced at any time into the process or the wastestream for the purpose of reducing the leachability of lead.

Comment: Commenter stated that the Agency should consider sampling and other requirements that will ensure that these factors will not change in the future.

Response: The exclusion requires periodic testing to verify that the waste will remain in compliance with the conditions of the exclusion. The final rule also includes language requiring American Steel Cord to notify the Agency of any change in process.

Comment: Commenter stated that the Agency should consider risks posed by total concentrations via the air pathway. No support has been offered for the conclusion that appreciable air releases are unlikely.

Response: Air modeling was done for the pathways of inhalation, ingestion of air borne particulates and air deposition on soil followed by ingestion by a child.

The concentrations of all constituents in American Steel Cord's waste were orders of magnitude below the health based levels of concern for each of these pathways. A full discussion of the air modeling is contained in the docket.

Comment: Commenter stated that since total concentration is used in evaluating risk by the air pathway, EPA should promulgate limits on total concentrations, as well as limits on the TCLP concentrations.

Response: Screening levels for this waste were back calculated and were determined to be a thousand to a million times the levels detected in American Steel Cord's waste. Thus the waste is not expected to pose a threat by the air pathway and the Agency believes that it is not meaningful to set limits on totals which would be three to six orders of magnitude above the concentrations detected in the waste.

Comment: Commenter stated that the proposed TCLP limit for xylene in this waste exceeds the allowable level for xylene in storage tanks in the air characteristics study.

Response: The scenario upon which the air characteristic study was based is not applicable to American Steel Cord's waste. This delisting applies to a limited quantity of non-liquid waste which will be disposed in a Subtitle D landfill. Furthermore, the highest total concentration of xylene in any sample of this waste was 22 ppb which is well below air characteristics number of 200 ppm for xylene in waste stored in tanks.

Comment: Commenter stated that the proposed rule only requires the facility to meet the applicable delisting levels but does not require notification of a change in process which should trigger Agency verification activities. The EPA should require notification of changes in operating conditions.

Response: In the event of a process change, the facility is required to meet the established delisting limits and must perform testing to verify that the levels established in this rule are being met. The facility must also verify that no additional constituents have been introduced. Data obtained from verification testing must be submitted to EPA.

Comment: Commenter stated that the EPA should add provisions to the final rule stating that the delisting is only valid when the waste is disposed of in a Subtitle D landfill permitted by the State, since the Agency has not evaluated all potential mismanagement scenarios.

Response: Specific language has been added to paragraph 1 of the final rule which requires that the waste must be disposed of in a Subtitle D landfill.

Comment: Commenter stated that the EPA should add provisions to the final rule stating that if the facility plans to dispose of the waste in a landfill on site, it must notify the Agency at least 60 days prior to first utilizing an onsite landfill.

Response: The Agency is requiring that the waste be disposed of properly in a Subtitle D landfill regulated by the State. To dispose of the waste on site, American Steel Cord would have to construct a Subtitle D landfill on its property and obtain all necessary permits from the State of Indiana. The US EPA does not regulate which Subtitle D landfill the waste may be sent to, nor does the Agency routinely require notification of wastes disposed in units regulated by the State.

Comment: Commenter stated that EPA should add provisions to the final rule stating that American Steel Cord must report to EPA receipt of any environmental data that departs from the data that were modeled or predicted in the initial delisting evaluation.

Response: Language has been included in paragraph 4 of the final rule which requires the facility to report in writing any data which might indicate that the levels in paragraph 1 of this rule have been exceeded or that the initial delisting decision was inappropriate or wrong.

Comment: Commenter stated that the proposed delisting has failed to include procedures for suspension or termination of the exclusion in the event of mismanagement of delisted waste.

Response: The Agency has recently adopted a policy of incorporating language into all new exclusions which will allow the Agency to reopen, revoke, or otherwise suspend the delisting in a timely manner in the event of mismanagement. This language will establish a mechanism to review and act expeditiously on the delisting when additional data become available indicating the initial delisting decision was inappropriate or wrong.

C. Changes to Proposed Verification Testing Conditions

In the proposed rulemaking, EPA included delisting levels for 23 constituents which would be protective of human health and the environment and which could not be exceeded in a TCLP extract of the petitioned waste. These levels have been lowered in today's rule to allow for an increased volume. In addition, the proposed levels of 200 mg/l for barium, 10 mg/l for chromium, 5 mg/l for selenium and 20 mg/l for silver have been lowered to the levels set in the hazardous waste

toxicity characteristic in § 261.24 to ensure that the petitioned waste, even though protective of human health and the environment, remains below the TC levels.

Levels in the proposed rule were based on "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," December 1994. This document was revised in May, 1996, and the health based level for benzo butyl phthlate was changed from .01 mg/l to 7.0 mg/l, the health based level for 1,4-dichlorobenzene was changed from .075 mg/l to .004 mg/l, and the health based level for cis 1,2-dichloroethene was changed from .07 mg/l to .4 mg/l. The delisting levels in today's final rule are based on the more recent health based numbers.

The proposed rule incorrectly allowed for a level of 10 mg/l chloroform. Under the proposed rule, the correct level should have been 1 mg/l. Under today's rule, the increased volume lowers the level for chloroform to .68 mg/l.

Paragraph 1 in Table 1 of Appendix IX to Part 261 now reads 1. Verification Testing: American Steel Cord must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 68. Arsenic—3.4 Barium—100; Cadmium—.34; Chromium—5; Copper—88.4; Lead—1.02; Mercury—.136; Nickel—6.8; Selenium—1; Silver—5; Zinc—680; Cyanide—13.6; Acetone—272; Benzo butyl phthlate—476; Chloroform—.68; 1,4-Dichlorobenzene—.272; cis 1,2-Dichloroethene—.272; Methylene chloride—.34; Naphthalene—68; Styrene—6.8; Tetrachloroethene—.34; Toluene—68; and Xylene—680. American Steel Cord must measure and record the pH of the waste using SW 846 method 9045 and must record all pH measurements performed in accordance with the TCLP.

D. Final Agency Decision

For the reasons stated in both the proposal and this notice, EPA has concluded that American Steel Cord's petitioned waste may be excluded from hazardous waste control. EPA, therefore, is granting a final exclusion for the WWTP sludge generated by American Steel Cord at its facility in Scottsburg, Indiana. This exclusion applies to the waste described in the petition only if

the requirements described in Table 1 of part 261 Appendix IX are satisfied.

Although management of the waste covered by this exclusion is removed from Subtitle C jurisdiction, this exclusion applies only where this waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage municipal and/or industrial solid waste.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose (non-RCRA) regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their waste under State law.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, American Steel Cord must obtain delisting authorization from that State before the waste may be managed as nonhazardous in the State.

IV. Effective Date

This rule is effective January 26, 1999. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a

specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. 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

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

This rule will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation 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 final rule have been approved by 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), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless

the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local or tribal governments or the private sector. In addition, today's 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. Submission to Congress and General Accounting Office

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

X. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety

Risks' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866 and the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

XI. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

XII. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by

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

List of Subjects in 40 CFR Part 261

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

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

Dated: December 21, 1998.

Margaret McCue,

Acting Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR Part 261 is 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. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
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TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	*
American Steel Cord ...	Scottsburg, IN	Wastewater treatment plant (WWTP) sludge from electroplating operations (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 3,000 cubic yards per year, after January 26, 1999, and disposed of in a Subtitle D landfill. 1. Verification Testing: American Steel Cord must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 68. Arsenic—3.4; Barium—100; Cadmium—.34; Chromium—5; Copper—88.4; Lead—1.02; Mercury—.136; Nickel—6.8; Selenium—1; Silver—5; Zinc—680; Cyanide—13.6; Acetone—272; Benzo butyl phthlate—476; Chloroform—.68; 1,4-Dichlorobenzene—.272; cis-1,2-Dichloroethene—27.2; Methylene chloride—.34; Naphthalene—68; Styrene—6.8; Tetrachloroethene—.34; Toluene—68; and Xylene—680. American Steel Cord must measure and record the pH of the waste using SW 846 method 9045 and must record all pH measurements performed in accordance with the TCLP. 2. Changes in Operating Conditions: If American Steel Cord significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, American Steel Cord may handle the WWTP filter press sludge generated from the new process under this exclusion only after the facility has demonstrated that the waste meets the levels set forth in paragraph 1 and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced. 3. Data Submittals: The data obtained through annual verification testing or compliance with paragraph 2 must be submitted to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590, within 60 days of sampling. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be made available for inspection. All data must be accompanied by a signed copy of the certification statement in 260.22(l)(12). 4. (a) If, anytime after disposal of the delisted waste, American Steel Cord 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 in Condition (1) is at a level in the leachate higher than the delisting level established in Condition (1), or is at a level in the ground water or soil higher than the health based level, then American Steel Cord must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The facility shall have 10 days from the date of the Regional Administrator's notice to present such information. (d) Following the receipt of information from the facility described in paragraph (c) or (if no information is presented under paragraph (c) the initial receipt of information described in paragraph (a), the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

[FR Doc. 99-1756 Filed 1-25-99; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-129; RM-9076]

Radio Broadcasting Services; New Martinsville, WV

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Seven Ranges Radio Company, Inc., allots Channel 222A at New Martinsville, West Virginia, as the community's third local FM transmission service. We will also allow petitioner to amend its pending application (File No. BPH-960223MA) to reflect operation on Channel 222A in lieu of Channel 258A at New Martinsville, West Virginia. See 62 FR 26466, May 14, 1997. Channel 222A can be allotted to New Martinsville in

compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) south to avoid a short-spacing to the licensed site of Station WWHC(FM), Channel 222A, Oakland, Maryland. The coordinates for Channel 222A at New Martinsville are North Latitude 39–34–38 and West Longitude 80–51–16. Since New Martinsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–129, adopted January 6, 1999, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Channel 222A at New Martinsville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–1714 Filed 1–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–144; RM–9329, MM Docket No. 98–145; RM–9330]

Radio Broadcasting Services; Buxton, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Buxton Communications Company, allots Channel 260A to Buxton, NC, as the community's first local aural service, and at the request of Buxton Radio Group, allots Channel 268A to Buxton, NC, as its second local aural service. *See* 63 FR 43656, August 14, 1998. Channels 260A and 268A can be allotted to Buxton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 35–16–06 NL; 75–31–54 WL. With this action, this proceeding is terminated.

DATES: Effective March 1, 1999. A filing window for Channels 260A and 268A at Buxton, NC, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–144 and MM Docket No. 98–145, adopted January 6, 1999, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Buxton, Channel 260A, Channel 268A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–1713 Filed 1–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–140; RM–9294, RM–9373]

Radio Broadcasting Services; Pauls Valley and Wynnewood, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Suelou, Inc., allots Channel 283A to Wynnewood, OK, as the community's first local aural service. The Commission also denies the request of Wright and Wright, Inc., to allot Channel 283A to Pauls Valley, OK, as the community's second local FM and third local aural service. *See* 63 FR 41766, August 5, 1998. Channel 283A can be allotted to Wynnewood in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 34–38–42 North Latitude; 97–10–00 West Longitude. With this action, this proceeding is terminated.

DATES: Effective March 1, 1999. A filing window for Channel 283A at Wynnewood, OK, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–140, adopted January 6, 1999, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Wynnewood, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Cheif, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99-1712 Filed 1-25-99; 8:45 am]

BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL-6222-5]

Acquisition Regulation: Administrative Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this final rule to amend the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to remove obsolete coverage and make other administrative changes based on recent revisions to the Federal Acquisition Regulation (FAR). As authorized by section 22(a) of the Office of Federal Procurement Policy Act, 41 U.S.C. 418b, this rule is being issued without notice and opportunity for public comment because it does not impose a significant cost or administrative impact on contractors or offerors.

EFFECTIVE DATE: February 25, 1999.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, U.S. EPA, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564-4367.

SUPPLEMENTARY INFORMATION:

A. Background

As part of the FAR 15 rewrite, the statutory fee limitations imposed on

cost-plus-fixed fee contracts that had been extended to cost-plus-award fee and cost-plus-incentive fee contracts was eliminated. The current FAR 15 only places limitations on fee for cost-plus fixed fee contracts. Additionally, two references included in the EPAAR 1552.242-70 "Indirect Costs" clause are no longer valid due to revisions in the FAR. This rule provides revised references to parallel FAR changes.

B. Executive Order 12866

This rule is not a significant regulatory action for the purposes of E.O. 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, recordkeeping, or compliance costs.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. 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 one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency

must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

H. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, 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, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

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

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rulemaking and specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390.

List of Subjects in 48 CFR Parts 1516 and 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

PART 1516—[AMENDED]

1. The authority citation for Parts 1516 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended.

2. Section 1516.405, paragraph (b) is amended by removing the words "in accordance with FAR 15.903(d)" from the final sentence of the paragraph.

PART 1552—[AMENDED]

3. Section 1552.216-75, is revised to read as follows:

1552.216-75 Base fee and award fee proposal.

As prescribed in 1516.405(b), insert the following clause:

Base Fee and Award Fee Proposal (FEB 1999)

For the purpose of this solicitation, offerors shall propose a combination of base fee and award fee. Base fee shall not exceed 3% of the estimated cost, excluding fee, and the award fee shall not be less than ____% of the total estimated cost, excluding fee. The combined percentages of base and award fee shall not exceed ____% of the total estimated cost, excluding fee.

(End of clause)

1552.242-70 [Amended]

4. Section 1552.242-70 is amended by revising the reference "FAR 42.703(a)" in the first paragraph of paragraph (a) in the clause to read "FAR 42.703-1(a)" and the reference "FAR 15.804-4" in the undesignated paragraph after paragraph (a) in the clause to read "FAR 15.406-2".

Dated: December 14, 1998.

Betty L. Bailey,

Director, Office of Acquisition Management.
[FR Doc. 99-1649 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-296]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard; Correction

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; correction.

SUMMARY: This rule makes an editorial correction to the recently published final rule delegating to the Commandant, the United States Coast Guard, the authority pertaining to the enforcement of various conservation statutes. The final rule was published in the **Federal Register** on Wednesday, November 4, 1998 (63 FR 59474) and was effective upon publication.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, C-50, (202) 366-4723, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The final rule amending 49 CFR Part 1, erroneously amends § 1.46 by adding paragraph (ooo) to reflect the delegation of the Secretary's authority pertaining to the enforcement of various conservation statutes to the Commandant of the Coast Guard. The paragraph should have been designated as paragraph (ppp) rather than paragraph (ooo). This correction is to rectify this mistake.

Issued in Washington, D.C., this 19th day of January, 1999 under authority delegated to me by 49 CFR Part 1, § 1.57 (l).

Nancy E. McFadden,
General Counsel.

Accordingly, in final rule, FR Doc. 98-29517, published on November 4, 1998 (63 FR 59474), make the following correction:

PART 1—[CORRECTED]

§ 1.46 [Corrected]

On page 59475, in this first column, in § 1.46, paragraph (ooo) is correctly designated as paragraph (ppp).

[FR Doc. 99-1633 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980817221-9020-02; I.D. 072898A]

RIN 0648-AL22

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Final rule; emergency interim rule.

SUMMARY: NMFS issues a final rule to implement Amendment 45 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) and an emergency interim rule to implement requirements of the American Fisheries Act (AFA) related to the 1999 Western Alaska Community Development Quota (CDQ) Program. These actions permanently extend the allocation of pollock to the CDQ Program, remove squid from the CDQ Program, and revise pollock CDQ catch accounting regulations. This action is necessary to implement Amendment 45 and CDQ Program-related provisions of the AFA.

DATES: Effective January 21, 1999, except the definitions for "Directed fishing for pollock CDQ" and "Groundfish CDQ fishing (applicable through December 31, 1998)", at § 679.2 and the amendment to §§ 679.20(b)(1)(iii)(A) and (b)(1)(iii)(D), 679.32(a)(2) through (a)(4), and 679.32(g) of the emergency interim rule are effective January 21, 1999 through July 20, 1999. Comments on the emergency interim rule must be submitted by February 25, 1999.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for Amendment 45 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the emergency interim rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907-586-7228.

SUPPLEMENTARY INFORMATION:**Management Background and Need for Action**

In Amendment 45, the North Pacific Fishery Management Council (Council) recommended permanent extension of the allocation of 7.5 percent of the pollock total allowable catch (TAC) in the Bering Sea and Aleutian Islands management area (BSAI) to the Western Alaska CDQ Program. In addition, Amendment 45 removes the pollock CDQ Program from the inshore/offshore section of the FMP and reorganizes three separate CDQ-related sections of the FMP into one section.

A notice of availability (NOA) for Amendment 45 was published in the **Federal Register** on August 5, 1998 (63 FR 41782), and the proposed rule was published on September 3, 1998 (63 FR 46993). The public comment period on the NOA ended on October 5, 1998, and the public comment period on the proposed rule ended on October 19, 1998. NMFS received four comments on the NOA and the proposed rule, one expressing general support for the amendment and three from other Federal agencies expressing "no comment." No changes were made to this rule as a result of the comments. NMFS approved Amendment 45 on November 4, 1998. The reasons for implementing Amendment 45 are stated in the preamble of the proposed rule.

The AFA was signed into law by the President on October 20, 1998, as part of the Omnibus Appropriations Bill FY99, (Pub. L. 105-277). Additional requirements for the pollock CDQ fisheries in the AFA supplement the requirements of Amendment 45 and must be implemented by NMFS before the start of the pollock CDQ fisheries on January 20, 1999. Specifically, section 206(a) of the AFA requires that 10 percent of the TAC of pollock in the BSAI shall be allocated as a directed fishing allowance to the CDQ program. Section 206(b) of the AFA requires that pollock bycatch in non-pollock CDQ fisheries will not accrue against the pollock CDQ allocation created in section 206(a). Finally, section 213(a) of the AFA, with one limited exception at section 213(c)(2), requires that the 10-percent pollock CDQ allocation remain in effect until December 31, 2004.

The AFA's requirement to allocate 10 percent of the pollock TAC to the pollock CDQ reserve through December 31, 2004, has the effect of supplementing the Council's recommendation in Amendment 45 to permanently allocate 7.5 percent of the

pollock TAC to a pollock CDQ reserve. In this final rule implementing Amendment 45, NMFS will retain the 7.5-percent allocation of the pollock TAC to the pollock CDQ reserve. NMFS will implement the AFA's 10-percent allocation of the pollock TAC to the pollock CDQ reserve through the BSAI groundfish specifications for 1999. Later in 1999, NMFS intends to initiate proposed and final rulemaking that would implement through regulation the AFA's 10-percent allocation for the years 2000 through 2004. If, at the end of 2004, the Council has not taken action to extend the 10-percent pollock CDQ allocation, the paragraph specifying a 10-percent allocation will expire and the pollock CDQ allocation will revert to 7.5 percent of the pollock TAC starting in 2005.

NMFS has determined that two types of changes to the Multispecies (MS) CDQ Program regulations must be implemented through an emergency interim rule in order for the CDQ Program-related provisions of the AFA to be effective by January 1999. These two regulatory changes are (1) to allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b) of the AFA, and (2) to remove the allocation of squid from the CDQ Program in order to allow the CDQ groups to maximize the possibility that the pollock CDQ directed fishing allowance will be fully harvested.

The AFA requires that NMFS implement these CDQ Program-related provisions of the AFA by January 1999. This deadline could not be met if the provisions were implemented through notice-and-comment rulemaking. At its November 1998 meeting, the Council concurred with NMFS's recommendation on this emergency interim rule.

Accounting for the Catch of Pollock in the CDQ Fisheries

The AFA requires that NMFS distinguish between pollock harvested in a directed fishery for pollock CDQ and pollock harvested in the non-pollock groundfish CDQ fisheries. Pollock harvested in the directed fisheries for pollock CDQ will accrue against the CDQ group's pollock CDQ allocation. Pollock harvested in other groundfish CDQ fisheries will not accrue against the CDQ group's pollock CDQ. This pollock catch will accrue against the pollock incidental catch allowance, established under section 206(b) of the AFA, for the incidental catch of pollock in groundfish fisheries other than pollock, including the non-

pollock open access fisheries and the non-pollock CDQ fisheries.

NMFS considered two options for defining directed fishing for pollock CDQ. The first option was to define directed fishing for pollock CDQ on the basis of the amount of pollock that is retained by a vessel while CDQ fishing. If pollock retention exceeded the maximum retainable bycatch (MRB) amount, then the vessel would be considered directed fishing for pollock CDQ. If pollock retention were below the MRB amount, any catch of pollock by the vessel would not accrue against the pollock CDQ. However, NMFS decided not to pursue this option for two reasons. First, using MRB amounts would lead to regulatory discards by vessels that catch pollock but do not want to have their pollock catch accrue to the pollock CDQ. Second, several sections of the regulations governing directed fishing and the calculation of MRB amounts for the open access fisheries would have to be revised to accommodate the application of MRBs in the CDQ fisheries. These revisions would add further complexity to already complex regulations and would increase the difficulty of managing the open access and CDQ fisheries.

The second option for defining directed fishing for pollock CDQ is to base the definition on the species composition of the haul by catcher/processors or of the delivery by catcher vessels. If the haul or delivery of pollock exceeds a certain percentage, the vessel will be considered directed fishing for pollock CDQ. NMFS selected this option because it does not require revisions to regulations governing the open access fisheries; it is simple to understand and apply; and it will not require regulatory discards of pollock.

In the EA/RIR prepared by NMFS for the emergency interim rule (see **ADDRESSES**), NMFS examined data from the 1998 pollock CDQ fisheries and the non-pollock open access groundfish fisheries in the BSAI to determine the appropriate percentage of pollock in the catch that will distinguish directed fishing for pollock CDQ from other groundfish CDQ fishing. This percentage will minimize situations in which (1) a haul or delivery by a vessel intending to target pollock does not meet the definition of directed fishing for pollock CDQ, and (2) a haul or delivery by a vessel not intending to target pollock CDQ does meet the definition of directed fishing for pollock CDQ. However, regardless of the percentage threshold selected, some pollock vessels intending to target pollock will catch pollock in hauls or deliveries that do not meet the

definition of directed fishing for pollock CDQ and will, therefore, accrue against the pollock incidental catch allowance. The opposite situation will also occur. Some vessels not intending to target pollock CDQ will catch pollock in hauls or make deliveries that exceed the selected percentage, in which case, this pollock will accrue against the CDQ group's pollock CDQ allocation.

Based on the data examined in the EA/RIR for the emergency interim rule, NMFS selected 40 percent as an appropriate threshold percentage to distinguish directed fishing for pollock from directed fishing for other species in the CDQ fisheries. Data from the 1998 pollock CDQ fisheries show that, if the 40-percent threshold had been applied in 1998, approximately 10 percent of the hauls and 0.20 percent of the pollock catch would not have been defined as occurring in the directed fishery for pollock CDQ. The 115 mt of pollock caught in these hauls, which did accrue to the 1998 pollock CDQ, would not have accrued to the pollock CDQ under the 40-percent threshold definition of directed fishing for pollock CDQ.

Observer data from ten trawl catcher/processors eligible for the MS CDQ fisheries during their 1998 BSAI groundfish open access fisheries also were examined to provide information about the percent pollock represents in hauls from non-pollock groundfish fisheries. These data showed that 3 percent of the hauls and 26 percent of the total pollock catch by these catcher/processors in the 1998 BSAI non-pollock groundfish fisheries would have met the 40-percent pollock threshold. Although the future groundfish CDQ fisheries may not have the same amounts of total catch, catch composition, or fishing conditions, the distribution of pollock in the 1998 non-pollock fisheries is the best data available to predict the results of using a 40-percent threshold.

Based on this information, NMFS believes that the 40-percent threshold provides a balance. It will result in most of the pollock catch by vessels intending to target pollock accruing to the pollock CDQ, and it will minimize the amount of pollock caught by vessels not intending to engage in directed fishing for pollock accruing to the pollock CDQ. Therefore, a new definition for directed fishing for pollock CDQ will be added under this emergency interim rule. Directed fishing for pollock CDQ will be defined as fishing that results in the following catch composition:

(1) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more of the

total round weight of all groundfish in the haul.

(2) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more of the total round weight of all groundfish delivered to a processor from a fishing trip.

The CDQ groups will be required to examine the catch composition of each haul or delivery by vessels using trawl gear and to determine whether the haul or delivery meets the definition of directed fishing for pollock CDQ. If the haul or delivery meets this definition, the CDQ group must report this pollock catch to NMFS on its CDQ catch report. NMFS will subtract this pollock catch from the amount available under the pollock CDQ allocation. If the haul or delivery does not meet the definition of directed fishing for pollock CDQ, the CDQ group is not required to report any pollock catch on the CDQ catch report for that particular haul or delivery. NMFS will examine observer data from all CDQ vessels to (1) verify the accuracy of the CDQ catch report and (2) add up the pollock caught by CDQ vessels that were not directed fishing for pollock CDQ and subtract that amount from the pollock incidental catch allowance.

Uncertainty exists concerning the appropriate percentage threshold because NMFS does not know how CDQ harvesting operations will be conducted under the new MS CDQ Program or how they may be affected by new conservation measures that NMFS will implement in 1999 to mitigate impacts of the pollock fisheries on Steller sea lions. NMFS intends to evaluate the impact of the 40-percent pollock threshold in the 1999 MS CDQ fisheries under this emergency interim rule. An adjustment to this threshold could be implemented under separate rulemaking if this percentage creates unanticipated constraints for the MS CDQ Program or creates an unintended opportunity for vessels participating in the MS CDQ fisheries to increase catch of pollock that will not accrue against the CDQ group's pollock CDQ allocation.

This action does not implement any changes to the current Improved Retention/Improved Utilization (IR/IU) regulations under which all vessels fishing CDQ are required to retain all pollock.

Accounting for the Catch of Other Groundfish CDQ or PSQ Species in the Pollock CDQ Fisheries

Under the regulations implementing Amendment 45, the pollock CDQ program will be integrated with the MS CDQ Program starting in 1999. One

change resulting from this integration is that incidental catch of non-pollock groundfish CDQ species in the directed pollock CDQ fishery will accrue against a CDQ group's allocation for those species. The AFA is silent concerning the accounting for incidental catch of non-pollock groundfish CDQ species in the pollock CDQ fishery and addresses only the accounting for incidental catch of pollock in the non-pollock groundfish CDQ fishery. As a result, the incidental catch of non-pollock groundfish CDQ species or prohibited species with a prohibited species quota (PSQ) in the pollock CDQ fishery must be subtracted from the CDQ group's CDQ and PSQ allocations.

Removing Squid as a CDQ Species

The current 7.5-percent squid CDQ allocation has been identified in public comment to NMFS and the Council as a likely constraint to the full harvest of the current 7.5-percent pollock CDQ allocation. Most of the squid caught in the CDQ fisheries will be caught in the pollock CDQ fishery. Changes in fishing practices to reduce the incidental catch of squid in other groundfish CDQ fisheries are not expected to prevent attainment of the 7.5-percent squid CDQ allocation before attainment of the 7.5-percent pollock CDQ allocation. Therefore, an increase in the pollock CDQ allocation to 10 percent of the pollock TAC without an increase in the squid CDQ allocation is very likely to constrain harvest of the AFA's allocation of pollock CDQ.

Squid bycatch in the 1998 pollock CDQ fisheries through November 6, 1998, was examined in the EA/RIR prepared for the emergency interim rule (see ADDRESSES). Approximately 339 mt of squid were caught in the 1998 pollock CDQ fisheries. The allocation of squid to the MS CDQ program in 1998 was 148 mt. In 1998, squid bycatch in the pollock CDQ fisheries did not accrue against the squid CDQ allocation. However, starting in 1999, under regulations implemented prior to the AFA, all squid bycatch in the pollock CDQ fisheries will accrue against the squid CDQ. Current regulations prohibit the CDQ groups from exceeding their squid CDQ. Starting in 1999, if the squid CDQ is reached before the pollock CDQ, existing CDQ regulations require the CDQ groups to stop fishing in any groundfish CDQ fisheries in which additional squid bycatch would be expected. Given existing regulations and the AFA increase in the pollock CDQ, the bycatch of squid likely will prevent the CDQ groups from catching their full pollock CDQ allocation. Based on the information in the EA/RIR, no other

CDQ or PSQ allocation is likely to result in the same type of limitation on the catch of pollock CDQ.

An increase in the squid CDQ allocation corresponding to the AFA's increased pollock CDQ allocation is not an available management measure. Section 305(i)(1)(C)(ii)(II) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that, until October 1, 2001, the percentage of a groundfish TAC allocated to the CDQ Program cannot exceed the amount approved by the Council prior to October 1, 1995. Therefore, in order to implement the increased pollock CDQ allocation of the AFA and the Magnuson-Stevens Act CDQ provisions not superceded by the AFA, NMFS must remove squid from the CDQ Program. Removal of squid from the CDQ Program will eliminate this likely constraint to harvest of the AFA's pollock CDQ allocation and will further the ability of the CDQ Program to accomplish its economic, social, and developmental goals. By removing squid from the CDQ Program, the catch of squid by vessels CDQ fishing will accrue against the overall squid TAC, which will continue to be managed to ensure that catch in CDQ and non-CDQ fisheries remains within the TAC and does not exceed the overfishing limit and that no CDQ fishery will be constrained by a squid CDQ quota.

Changes From the Proposed Rule

The following regulatory amendments were contained in the proposed rule but are not implemented in the final rule because they conflict with elements of the emergency interim rule implemented to comply with the AFA:

1. In § 679.31, the separate paragraph (a) specifying the pollock CDQ reserve is not removed but is revised by removing the expiration date. Paragraphs (b) through (g) are not redesignated because the AFA requires specification of the pollock CDQ reserve separately from the other groundfish CDQ reserves.

2. The proposed revision to the definition of the halibut CDQ reserve in § 679.2 is not implemented because reference to a new paragraph number for the halibut CDQ reserve in § 679.31 is not necessary.

3. The separately specified pollock CDQ reserve in § 679.20(b)(1)(iii)(A) is not removed. The pollock CDQ reserve must continue to be specified separately from the other groundfish CDQ reserves because the percentage allocation for pollock CDQ under the AFA (10 percent) differs from the percentage

allocation for most other groundfish CDQ species (7.5 percent).

The following changes are made in the final rule:

1. A new definition is added for the American Fisheries Act.

2. A December 31, 1998, expiration date is removed from the definition for "Community Development Quota Program." This sunset date was implemented under the inshore/offshore allocations and should have been proposed to be permanently extended under the proposed rule for Amendment 45.

3. The preamble to the proposed rule stated that NMFS was proposing to revise the definition of "CDQ reserve" so that it applied to any CDQ species (groundfish, halibut, or crab) rather than to groundfish CDQ only. However, NMFS inadvertently left out the revised definition in the proposed regulatory text. NMFS is including this definition in the final rule because it clarifies and corrects a definition without implementing a restriction. The public was provided with an opportunity to comment on the change as described in the preamble of the proposed rule.

4. The following definition for groundfish CDQ fishing expired on December 31, 1998: "groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any CDQ or PSQ species other than pollock CDQ, halibut CDQ, and fixed gear sablefish CDQ." This definition was necessary because the pollock CDQ fisheries, fixed gear halibut and sablefish CDQ fisheries and the MS groundfish CDQ fisheries were managed under different regulations through December 31, 1998. Under current regulations, pollock and fixed gear sablefish are integrated with the MS groundfish CDQ fisheries starting in 1999, although the AFA has since superceded some aspects of this integration. A slightly revised definition is necessary to support the current MS groundfish CDQ regulations and should have been included in the proposed rule for Amendment 45. The revised definition states that "groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species." The revised definition does not conflict with separate definitions for directed fishing for pollock CDQ under the emergency interim rule. A new definition for halibut CDQ fishing will be addressed in a future proposed rulemaking.

5. The prohibition currently at § 679.7(d)(24), which applies only in 1998 and prohibits the use of other than pelagic trawl gear in the pollock CDQ

fisheries, is removed. This prohibition was recommended by the Council at its meeting in April 1996 to minimize the amount of bycatch in the 1998 pollock CDQ fisheries that would accrue against TAC and prohibited species catch limits for the moratorium groundfish fisheries. This recommendation was made because bycatch in the 1998 pollock CDQ fisheries did not accrue against the multispecies groundfish CDQs or against the prohibited species quotas. The Council had recommended that the current prohibition be implemented only for 1998. However, at its June 1998 meeting, the Council recommended that NMFS prepare proposed rulemaking that would prohibit using other than pelagic gear in all BSAI pollock fisheries. If implemented, this prohibition would apply to the pollock CDQ fisheries in the future. Furthermore, the 1999 annual groundfish specifications allocate zero amounts of pollock to the directed fishery for pollock using non-pelagic trawl gear under § 679.20(a)(5)(i)(B). This prohibition will also apply to the 1999 pollock CDQ fishery.

6. In § 679.32(a)(1), the applicability paragraph is revised to remove reference to paragraphs (a)(2) and (a)(3) of this section which expired on December 31, 1998. See below for an explanation of a new paragraph (a)(4) that is added under this emergency interim rule.

7. In § 679.50(c)(4), reference to § 679.32(e) at the beginning of the paragraph is removed because it referred to the section that sunset on December 31, 1998.

The following emergency interim rule is implemented to comply with the AFA. These requirements are effective for 180 days after January 21, 1999.

1. A new definition is added for "Directed fishing for pollock CDQ." This definition and the reason for it was discussed in a previous section.

2. The definition for "Groundfish CDQ fishing (applicable through December 31, 1998)" is amended to remove a separate reference to pollock CDQ fishing and fixed gear that applied through December 31, 1998.

3. Section 679.20(b)(1)(iii)(A) is suspended and a new paragraph (b)(1)(iii)(D) is added to remove squid as a CDQ species.

4. In § 679.32, paragraphs (a)(2) and (a)(3) expired on December 31, 1998, and are suspended. In § 679.32, a new paragraph (a)(4) is added to reference requirements for pollock CDQ under the emergency interim rule in paragraph (g) of this section.

5. Section 679.32(e) expired on December 31, 1998 and is suspended. Under this emergency interim rule, a

new § 679.32(g) is added to address the accounting of pollock in the groundfish CDQ fisheries. Section 679.32(g)(1) requires that pollock caught by vessels directed fishing for pollock accrue against the pollock CDQ and that this pollock CDQ must be reported on the CDQ catch report. Section 679.32(g)(2) requires that pollock caught by vessels that are not directed fishing for pollock does not accrue against the pollock CDQ. This pollock catch must not be reported on the CDQ catch report. Section 679.32(g)(3) reiterates that all pollock caught in any groundfish CDQ fishing must be retained under the IR/IU regulations.

Compliance Guide for Small Entities

The Small Business Regulatory Enforcement Fairness Act requires NMFS to prepare a compliance guide that explains how small entities must comply with the regulations implemented in this final rule and this emergency interim rule.

The small entities affected by this rule are the 6 CDQ groups, the 56 western Alaska communities eligible for the CDQ program, 4 of the Alaskan communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, 140 catcher vessels using trawl gear, 31 catcher/processors using trawl gear, 3 motherships, and 8 shoreside processing plants (see additional discussion of impacts in the Classification section).

All of these small entities are affected by the permanent 7.5-percent extension of the pollock CDQ allocation. Direct participants in the fisheries, including the CDQ groups, their harvesting and processing partners, and the vessels and processors that participate in the open access pollock fisheries are required to conduct their pollock fisheries so that the catch of pollock does not exceed the quotas established by this rule and by other regulations governing the BSAI pollock quotas.

The CDQ groups are required to monitor and accurately report the catch of pollock CDQ. They must evaluate each haul by a catcher/processor or delivery by a catcher vessel to determine whether pollock represents 40 percent or more of the total groundfish catch weight. If this criteria is met, the pollock catch must be reported on the CDQ catch report subtracted from the CDQ group's available pollock CDQ. If the haul or delivery does not meet the 40 percent threshold, the CDQ group must not report this pollock catch on the CDQ catch report. This pollock catch will be monitored by NMFS through data

collected by the CDQ observer and will be subtracted from the amount of pollock available to the CDQ and non-CDQ fisheries in the incidental catch allowance.

The removal of squid as a CDQ species does not result in any additional requirements on any participant in the CDQ or non-CDQ fisheries.

No additional recordkeeping or reporting requirements are placed on the vessels or processors participating in the pollock or other MS groundfish CDQ fisheries or on the communities affected by the pollock CDQ allocation.

Classification

The Administrator, Alaska Region, NMFS, (Regional Administrator) determined that the final rule implementing Amendment 45 and the emergency interim rule implementing parts of the AFA are necessary for the conservation and management of the groundfish fisheries of BSAI. The Regional Administrator also determined that this final rule and emergency interim rule are consistent with the Magnuson-Stevens Act and other applicable laws.

The final rule and the emergency interim rule have been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a final regulatory flexibility analysis for Amendment 45. Amendment 45 is necessary to continue the allocation of pollock to the CDQ Program after December 31, 1998. NMFS received no comments on the Initial Regulatory Flexibility Analysis.

The analysis estimates that the total universe of entities affected by regulations governing the BSAI pollock fishery is 249. Of these, 130 are small entities. The total universe comprises 6 CDQ groups, 56 western Alaska communities eligible for the CDQ program, 5 communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, 140 catcher vessels using trawl gear, 31 catcher/processors using trawl gear, 3 motherships, and 8 shoreside processing plants. The small entities are the 6 CDQ groups, the 56 western Alaska communities eligible for the CDQ program, 4 of the Alaskan communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, and 64 of the catcher vessels.

The 64 catcher vessels participating in the BSAI pollock fisheries could be significantly impacted by the pollock CDQ allocation because a 7.5-percent reduction in the pollock TAC may reduce the annual gross revenues of these vessel owners by more than 5

percent relative to the alternative of not allocating pollock to the CDQ program. The impact of the pollock CDQ allocation on the four Alaskan non-CDQ communities (Unalaska, Sand Point, King Cove, and Kodiak) is not known but could be significant depending on the amount of annual revenue lost because pollock CDQ may be processed at different plants than pollock from the open access fisheries. The 64 catcher vessels and four non-CDQ communities represent 52 percent of the small entities in the BSAI pollock fisheries.

The 6 CDQ groups representing 56 western Alaska communities derive a significant portion of their CDQ revenues from the pollock CDQ allocation. Allocating 7.5 percent of the pollock TAC to the CDQ program will allow these small entities to continue to benefit from the pollock CDQ fisheries. Not reauthorizing the pollock CDQ allocation would have a significant impact on these small entities.

NMFS considered two alternatives that could have mitigated the negative economic impacts on the small entities affected by this action. The first alternative would be to allocate 3.5 percent of pollock TAC to the CDQ reserve. Although this alternative would benefit the small entities not receiving CDQ allocation, the benefits accruing to the 56 CDQ communities would be considerably less. The alternatives that those communities have for generating income and investment are so small that the reduction from 7.5 percent to 3.5 percent reserve would be likely to produce significant negative economic impacts on these small entities. The trade off is clear; by reserving 3.5 percent instead of 7.5 percent, the catcher vessels gain at the expense of the CDQ communities. However, because of the relative absence of alternative economic bases in the CDQ communities, those communities will experience a relatively greater economic impact than would other regions of the State and the country in general.

The second alternative would be to let the present reserve of 7.5 percent of pollock TAC expire at the end of 1998. This action would result in a further shift of impacts from one set of small entities to another. It would benefit the non-CDQ participants in the fishery while cutting revenues of the CDQ groups.

Because the CDQ program is allocative by nature, any approved alternative will affect small entities. If the 7.5 percent allocation alternative were found to be inconsistent with the Magnuson-Stevens Act, NMFS could only disapprove it. Reconsideration of the 3.5 percent or other allocation

alternatives by the Council and the public would be time consuming and disruptive to the ongoing CDQ program. Because this rule is an allocation from one group of small entities to another, the Council weighed the economic and social effects and selected its preferred alternative as a legal alternative for achieving its statutory objective of allocating the TAC of pollock in the Bering Sea and Aleutian Islands fishery to the CDQ program.

A copy of this analysis is available from NMFS (see **ADDRESSES**).

The portions of this rule implemented as an emergency interim rule are exempt from the procedures of the Regulatory Flexibility Act because these portions of the rule are issued without opportunity for prior public comment.

NMFS finds that good cause, under the authority contained in 5 U.S.C. 553(d)(3), exists to waive the 30-day delay in effective date for the provisions implemented by the final rule. The primary provision of the final rule is to permanently extend the 7.5% pollock CDQ allocation. This provision, which must be effective to coincide with the effective date of the emergency interim rule provisions prior to the start of the pollock CDQ fisheries on January 20, 1999, would not require any regulated entities to take any steps to come into compliance. As such, a delay in effective date is both unnecessary and contrary to the public interest.

NMFS also finds that the emergency portion of this rule implementing mandatory provisions of the AFA must be effective by January 20, 1999. The AFA was enacted October 20, 1998, and contains provisions which must be in place prior to the start of the pollock fishery on January 20, 1999. Given this very short time between enactment and the opening of the fishery, there was not sufficient time to accept prepromulgation comment on these provisions. Further, if the procedure for promulgating these rules went beyond January 20, the fishing season could not begin as scheduled. As such, there is good cause to waive the requirement to provide prior notice and the opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. Similarly, the need to implement these emergency measures by January 20, 1999, the opening of the pollock fishery, so that the CDQ groups may fully harvest their pollock CDQ and properly account for their pollock bycatch as established in the AFA, constitutes good cause under the authority contained in 5 U.S.C.

553(d)(3) to waive the 30-day delay in effective date.

The emergency interim rule contains a reduction in a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB control number 0648-0269. Shoreside processors and CDQ groups currently are required to report all pollock harvested in the CDQ fisheries on CDQ delivery reports and CDQ catch reports. This emergency interim rule requires that the incidental catch of pollock in non-pollock CDQ fisheries not be reported on the CDQ delivery report and the CDQ catch report.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 20, 1999.

Andrew A. Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In § 679.2, the definitions for “Community Development Quota Program (CDQ Program)(applicable through December 31, 1998)”, “Community Development Quota Reserve (CDQ Reserve) (applicable through December 31, 1998)”, “Pollock CDQ fishing” and “Sablefish CDQ reserve” are removed; the definitions for “CDQ allocation”, “Community Development Quota”, “PSQ allocation”, and “PSQ species” are revised; the definition for “Groundfish CDQ fishing (applicable through December 31, 1998)” is suspended; and new definitions for “American Fisheries Act (AFA)”, “Community Development Quota Program (CDQ Program)”, “Community Development Quota Reserve”, “Groundfish CDQ fishing”, “Directed fishing for pollock CDQ”, and

“Fixed gear sablefish CDQ reserve” are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

American Fisheries Act (AFA) means Title II—Fisheries Subtitles I and II, as cited within the Omnibus Appropriations Bill FY99 (Pub. L. 105–277).

* * * * *

CDQ allocation means a percentage of a CDQ reserve specified under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

* * * * *

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program.

Community Development Quota Program (CDQ Program) means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

Community Development Quota reserve (CDQ reserve) means a percentage of a total allowable catch for groundfish, a percentage of a catch limit for halibut, or percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ program.

* * * * *

Directed fishing for pollock CDQ means fishing that results in the following:

(1) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more by weight of the total round weight of all groundfish in the haul.

(2) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more by weight of the total round weight of all groundfish delivered to the processor.

* * * * *

Fixed gear sablefish CDQ reserve means 20 percent of the sablefish fixed gear TAC for each subarea in the BSAI for which a sablefish TAC is specified under § 679.20(b)(1)(iii)(B). See also § 679.31(b).

* * * * *

Groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species.

* * * * *

PSQ allocation means a percentage of a PSQ reserve specified under § 679.21(e)(1)(i) and (e)(2)(ii) that is assigned to a CDQ group when NMFS approves a proposed CDP. See also § 679.31(d).

PSQ species means any species that has been assigned to a PSQ reserve under § 679.21(e)(1)(i) and (e)(2)(ii) for purposes of the CDQ program. See also § 679.31(d).

* * * * *

§ 679.7 [Amended]

3. In § 679.7, paragraph (d)(24) is removed and paragraphs (d)(25) through (d)(28) are redesignated as paragraphs (d)(24) through (d)(27), respectively.

4. In § 679.20, paragraphs (b)(1)(iii)(A) is suspended and paragraph (b)(1)(iii)(D) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(D) *Groundfish CDQ*. Except as limited by § 679.31(a) and section 206(a) of the AFA, one half of the nonspecified reserve established by paragraph (b)(1)(i) of this section for all species except squid is apportioned to the groundfish CDQ reserve.

* * * * *

5. In § 679.30, paragraph (a)(4) is revised to read as follows:

§ 679.30 General CDQ regulations.

(a) * * *

(4) *Request for CDQ and PSQ allocations*. A list of the percentage of each CDQ reserve and PSQ reserve, as described at § 679.31 that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for CDQ fisheries identified by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

* * * * *

§ 679.31 [Amended]

6. In § 679.31, paragraph (a) is amended by removing parenthetical “(applicable through December 31, 1998)”.

7. In § 679.32, paragraph (a)(1) is revised, paragraphs (a)(2), (a)(3), and (e) are suspended and new paragraphs (a)(4) and (g) are added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) *Applicability*. (1) The CDQ group, the operator of a vessel, and the manager of a shoreside processor must comply with the requirements of paragraphs (b) through (d) of this section while groundfish CDQ fishing as defined at § 679.2. In addition, the CDQ group is responsible for ensuring that

vessels and processors listed as eligible on the CDQ group’s approved CDP comply with all requirements of this section while harvesting or processing CDQ species.

* * * * *

(4) Requirements for the accounting of pollock while CDQ fishing are at paragraph (g) of this section.

* * * * *

(g) *Pollock CDQ*—(1) *Directed fishing for pollock CDQ*. Owners and operators of vessels directed fishing for pollock CDQ as defined at § 679.2 and processors taking deliveries from vessels directed fishing for pollock CDQ must comply with all applicable requirements of paragraphs (a) through (d) of this section. Pollock catch by vessels directed fishing for pollock CDQ will accrue against the pollock CDQ for the CDQ group. The CDQ group must report all pollock caught by vessels directed fishing for pollock CDQ on the CDQ catch report.

(2) *Catch of pollock by vessels not directed fishing for pollock CDQ*. Pollock catch by vessels groundfish CDQ fishing, but not directed fishing for pollock CDQ as defined at §

679.2, will not accrue against the pollock CDQ for the CDQ group. The CDQ group must not report this pollock catch on the CDQ catch report.

(3) Vessel operators must retain all pollock caught in any groundfish CDQ fishery as required at § 679.27 (IR/IU).

* * * * *

8. In § 679.50, paragraph (c)(4) is revised to read as follows.

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

* * * * *

(c) * * *

(4) *Groundfish CDQ fisheries*. The owner or operator of a vessel groundfish CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

* * * * *

[FR Doc. 99–1605 Filed 1–21–99; 12:53 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 64, No. 16

Tuesday, January 26, 1999

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

Office of the Secretary

[Docket No. OST-95-248, formerly Docket 50053; RIN 2139-AA00]

14 CFR PART 234

Amendments to the On-Time Disclosure Rule

AGENCY: Office of Secretary, DOT.

ACTION: Notice of withdrawal.

SUMMARY: The Office of Secretary is withdrawing its rulemaking proposal to revise the on-time flight performance reporting requirements. The Department had proposed to re-establish the exclusion of flights delayed or cancelled due to mechanical problems. This withdrawal of the rule is taken in response to comments made to the notice of proposed rulemaking by consumer groups, safety experts and various airlines.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Clay Moritz, Office of Airline Information, K-25, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590-0001, (202) 366-4387 or 366-4385, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1995, the Research and Special Programs Administration ("RSPA") issued a Notice of Proposed Rulemaking ("NPRM") (60 FR 29515; June 5, 1995) seeking public comments on the proposal to revise the on-time flight performance reporting requirements by re-establishing the exclusion of flights delayed or cancelled due to mechanical problems. The NPRM also sought comments on (1) the retroactive application of the proposal, (2) the collection and publication of flight completion data, and (3) the filing frequency of the data collection.

Shortly, after the RSPA issued the NPRM, its Office of Airline Statistics was transferred to the Bureau of

Transportation Statistics (BTS). BTS renamed the office the "Office of Airline Information" (OAI). OAI administers the on-time flight reporting program.

Comments to the NPRM were received from eight air carriers (America West, American Airlines, Delta Air Lines, Northwest Airlines, Southwest Airlines, Trans World Airlines, United Air Lines, and USAir); three labor unions (the Air Line Pilots Association, the International Association of Machinists and Aerospace Workers, and Southwest Airlines Pilots' Association); seven consumers groups (American Automobile Association, Aviation Consumer Action Project, Best Fares Magazine, Consumers Report Magazine, International Airline Passengers Association, J.D. Power and Associates, and the National Consumers League); one research group (Aviation Foundation); one state agency (Michigan Department of Transportation); and 19 individuals, which include three pilots and one mechanic. Also, letters to DOT Secretary Peña from Representatives Luther and Oberstar, Senator Pressler and the House of Representatives' Committee on Transportation and Infrastructure co-signed by Congressmen Duncan, Shuster, Costello, Weller, DeFazio, LaHood, Lipinski, Bachus, Clement, Seastrand, Kim, and Ewing were placed in the docket.

The issues addressed by the comments were safety, consumer interest, publication of a completion factor, reporting frequency, cost of reporting, and restatement of prior data. Each of these issues is discussed below under separate captions.

Safety

The American Automobile Association (AAA) has over 37 million members and operates approximately 900 accredited travel agency locations. AAA does not believe that any air carrier would cut safety to gain a perceived marketing advantage. According to an informal survey by AAA travel agencies, flight delays were low on the list of air passenger concerns.

The Airline Pilots Association (ALPA) believes the inclusion of mechanical delays and cancellations creates a conflict between safety and on-time performance. ALPA cites the report "Zero Accidents—A Shared Responsibility," prepared by a group of safety experts, that reporting mechanical

delays and cancellations could intimidate maintenance personnel and encourage unsafe practices. ALPA wrote, "While airlines and their employees will always consciously place safety ahead of on-time performance, the rule as amended in September, 1994—to include mechanical delays in the on-time reports—raises the potential of a conflict between on-time performance and the commitment to safety."

American Airlines believes that DOT should continue requiring airlines to report mechanical delays and cancellations as they have done since January 1995 without any impact on safe operations. American said that there has not been any reported instance where a pilot or mechanic was pressured to compromise safety, since American and other airlines did not change their safety-related dispatch of aircraft. By letter dated April 21, 1995, the chief safety officers of American, Delta, United and USAir advised Secretary Peña that airline employees would not compromise safety because of on-time reporting considerations. They stated that reporting mechanical delays and cancellations creates an incentive for air carriers to improve their mechanical performance through the use of spare aircraft and parts, mechanic staffing, scheduling practices, fleet decisions, etc.

In testimony before the House Committee on Transportation and Infrastructure, Subcommittee on Aviation, Robert W. Baker, American's Executive Vice President—Operations, stated "No mechanic would jeopardize the lives of customers and fellow workers, as well as his or her career to give us a possible boost in a DOT dependability statistic." He went on to state that if the industry were now sending out unsafe aircraft to avoid delays, that fewer delays would be reported. However, the incidence of delays has not decreased.

In a letter to Secretary Peña, the Aviation Subcommittee on Transportation and Infrastructure stated, "Including mechanical delays may actually enhance safety by giving airlines an incentive to keep their aircraft in top condition to avoid mechanical problems." Moreover, since mechanical delays and cancellations have been included in the carriers' reports, there is no evidence that safety

has been impaired. A correlation to reporting mechanical-related delays is the reporting of weather-related delays. The subcommittee stated that it knows of no instances where an airline employee avoided deicing an aircraft, flew in dangerous weather conditions or engaged in risky behavior in order to improve on-time performance. "Given the competence and integrity of aviation workers, we cannot believe that any of them would put on-time performance ahead of human life."

Delta Air Lines states that there is "no safety issue associated with on-time reporting." Delta refutes Northwest's claim that, during a January 1995 safety conference, there was "unanimous" agreement that reporting mechanical delays and cancellations have negative safety implications. Delta along with American, United and USAir represent 68.4 percent of revenue passenger miles and 58.5 percent of departures among reporting carriers. These four carriers have confidence in the integrity of their pilots and mechanics that "they would not compromise safety to make an on-time goal."

Since there is no evidence that any airline or employee has ever compromised safety to achieve an on-time flight, Delta questions DOT's logic for singling out mechanical delays for exclusion from the reporting system. Delta believes that mechanical delays should be treated in the same manner as weather delays, fueling delays and deicing delays, since they all involve an element of employee judgment.

Mr. Jeffrey R. Grunow believes U.S. air travelers are intelligent consumers and do not need the benevolent protection of the government on this issue. One of the FAA's roles is to monitor the maintenance of aircraft. Maintenance delays should remain in the on-time reports.

International Airline Passengers Association (IAPA) believes that the consumer should know if an airline is "suffering many mechanical delays, it may be an early sign of financial distress or retention of older aircraft too long." Also, IAPA believes in the integrity of the professional mechanics, flight crews and cabin crews to operate in a safe manner. If DOT is concerned that a mechanic would take improper action to improve a carrier's on-time performance, it should impose substantial fines or criminal sanctions for such an act.

The international Association of Machinists and Aerospace Workers (IAMAW) strongly supports the exclusion of mechanical delays and cancellations from on-time reporting. It states that interests of airline safety

cannot be subordinated to the carriers' competitive need to improve on-time performance percentages. IAMAW stated that safety experts believe that "inclusion of mechanicals intimidates maintenance personnel and encourages potentially unsafe practices."

Mr. Darryl Jenkins, a visiting scholar at George Washington University, does not believe that safety will be adversely impacted by the reporting of mechanicals. However, if the Department believes otherwise, then delays due to weather should not be included in on-time performance report because dispatchers face a conflict between on-time performance and safety.

State of Michigan Department of Transportation believes including mechanical delays and cancellations could compromise safety. Airline personnel may feel compelled to send out an aircraft with mechanical problems to maintain on-time performance records.

Northwest Airlines contends that the inclusion of mechanicals may compromise safety by placing undue pressure on maintenance personnel and increase the likelihood of human error. Northwest states that the elimination of mechanicals from the Department's on-time reporting system ranked among the top five safety recommendations of the Aircraft Maintenance Procedures and Inspections Workshop at the 1995 Aviation Safety Conference. Northwest stated, "including mechanical delays in on-time reporting may well have an impact on the safety of our system. There is no legitimate reason for assuming any additional safety risk for the sake of more pristine on-time performance data. We can and should choose to eliminate this risk."

Southwest Airlines believes the only practical means of resolving the inherent conflict between on-time performance and safety is reinstitution of the exclusion for mechanical problems. Because on-time rankings are widely reported in the media, they have become an important component in airline advertising.

The Southwest Airlines Pilots' Association (SWAPA) states that the inclusion of mechanicals puts added pressure on an employee to get a job done properly and in a timely manner. SWAPA recommends that DOT take the safe and proven action of not reporting mechanicals.

TWA believes that there is a serious risk that operating personnel will feel pressured by the on-time reporting requirements to release aircraft faster, and that the risk of error will be increased by such pressure.

United Air Lines states that including mechanicals in its on-time reports for the first several months of 1995 has not otherwise affected United's operation or its commitment to safety. Passenger safety is still the most important responsibility of air carriers. For the Department to second-guess its earlier decision to include mechanical delays and cancellations and now reverse itself can only cause consumers and the airline industry, generally, to question the Department's credibility.

USAir (now US Airways) states that there is no evidence to support the argument that on-time reporting statistics affect safety or maintenance practices. Excluding mechanical delays rewards carriers that choose to operate with older, less reliable aircraft, or with less rigorous preventive maintenance programs.

Mr. Ed Wayman, an accountant with piloting experience, says that he always takes the safe course when it comes to flying, and this goes double when he has family along. He believes that mechanicals should be reported so that he and others can make more informed decisions.

Mr. Roger White, a pilot and airline consumer, believes that no pilot is going to take an aircraft with a questionable mechanical defect. No airline will survive if it intimidates mechanics into releasing non-airworthy aircraft. Too many people are involved in the process to say that one person alone can allow an unsafe aircraft to fly.

Representative Oberstar states, "The purpose of the [on-time] reporting was to encourage airlines to modify their behavior, not take risks. For that reason, mechanical delays, which are beyond the control of the carriers, wisely were not included in the counts." Representative Oberstar adds, "Mechanical delays are beyond the control of the carriers. It is critically important to safety that such delays be honored until the repairs are made. No good public purpose is served by giving an airline a black mark for fixing an airplane." Representative Oberstar argues that the Department should remove mechanical delays from the reports.

Consumer Interest

AAA stated that flights delayed or cancelled because of mechanical problems should be included in the air carrier on-time performance in order to provide the most reliable and accurate information to the consumer.

American and Delta believe that the inclusion of mechanical delays and cancellations is pro consumer, allowing

the consumer to know his overall chance of receiving on-time service.

Delta believes that if mechanical delays are excluded, the Department should limit the exclusion to the one flight where the mechanical occurred. The Department should not allow carriers to reap an unintended windfall by permitting exclusions of downline delays which may be only tenuously related to the initial event.

The National Consumers League, International Airline Passengers Association, Aviation Foundation, Best Fares, Consumer Reports Travel Letter, Aviation Consumer Action Project and JD Power Associates filed a consensus statement. Their main concern is that the traveling consumers receive "reliable, accurate, complete, and consistent information to make sound travel decisions." They believe that carriers must report their mechanical delays and cancellations to have reliable, accurate, complete, and consistent data.

Donald J. Arndt, a business traveler, wants more informative data to help when making travel decisions. Delays should be reported in five categories: weather, mechanicals, airline-induced, taxi delays, and other (passenger-induced, no fault of air carrier). If DOT drops mechanical delays and cancellations from the data, it should just stop providing the information. Mr. Arndt stated, "The main problem we have today is the amount of lying that goes on with airline information."

Peter Bentley requests that DOT not exclude mechanical delays and cancellations. He believes exclusion would distort the on-time results in favor of the least efficient airlines and be detrimental to the airlines that do not inconvenience their customers and still maintain safe aircraft.

The Aviation Subcommittee on Transportation and Infrastructure believes that on-time performance data provide important information to consumers that would lose value if certain types of delays were excluded.

Mr. Roy L. Farrelly, a pilot from Delta Air Lines, states that excluding mechanical delays would make the reports useless.

Ms. Laurie Fitch, Mr. Joseph M. Grohsan, Ms. Wendy Jaquez, Mr. Kenneth R. Kirkwood, Mr. G.L. Krayniak, Mr. Daniel C. Palmer, Mr. Gary Reed, and Mr. William M. Patterson filed separate comments. They want total, accurate information to make travel decisions. They support the inclusion of mechanical delays in the on-time statistics.

IAPA would like the reason for flight delays to be identified. Some delays are

caused by weather, by the air traffic control system or by the airlines. "Any accurate system of on-time reporting should give higher grades to the airline that gets its passengers to its destination, rather than the airline that has a mechanical, cancels a flight and strands the passengers." Excluding mechanical delays from on-time reporting ends up penalizing a carrier that serves its passengers by getting them to their destination by using a backup aircraft when it has a mechanical problem.

Mr. Darryl Jenkins wrote, "In reality, the Department has failed to appreciate the power of information in the hands of the consumer. Information that is incomplete, unreliable and inaccurate—such as is being proposed—only sustains poor performance and reinforces marketplace inefficiencies."

Mr. Keith. Johnson, a pilot from United Airlines, supports the exclusion of mechanical delays and cancellations. He also believes that carriers like United, Delta and American are at a disadvantage because they use the latest technology that records their takeoff and landing times automatically. Northwest and Southwest use manual input, which Mr. Johnson believes can work to those carriers' benefit.

National Consumer League asks that DOT provide complete information about airline on-time performance. Excluding mechanicals is basically unfair. An airline that encounters a few weather delays, which are unavoidable, loses out in the on-time rankings to another carrier that misses the bad weather but has many flights delayed and canceled because of mechanical problems, because mechanical problems are not part of the calculation. By excluding mechanicals, DOT penalizes the very airlines that have chosen to put in place aggressive preventive maintenance programs.

Mr. Craig Searls says that it is very important to business travelers to assess the probability of arriving at their destination on-time. He believes most delays are caused by the weather, mechanical problems and system operation delays. The weather can be estimated from the newspapers, but the only way to assess the likelihood of mechanical problems is through DOT's on-time performance reports.

United Air Lines believes that including mechanical delays avoids the differences in how airlines categorize mechanical delays, and provides uniform and complete public disclosure. Excluding mechanicals skews the data and produces an inaccurate assessment of air carrier performance.

USAir believes that excluding mechanicals would be a real disservice to consumers because it paints an inaccurate picture of carriers' performances.

Mr. James Whelan, an aircraft maintenance professional with 30+ years of experience, states that maintenance delays are part of an airline's overall on-time performance and should be included in the statistics.

Mr. White wants to know what percentage of all flights arrive on-time, not just the "good flights" or those that do not have a mechanical problem.

Autre E. Wilson and Betty S. Wilson filed a joint comment. They believe mechanicals should be included in the on-time performance reports to provide the public with a real picture of airline performance. Air traffic controllers at St. Louis Lambert International Airport are frequently cited as the cause of airline delays when, in fact, the actual cause is an air carrier that operates many older jet aircraft.

Publication of a Flight Completion Factor

American believes that mechanicals should be included in the completion percentage even if they are excluded from the on-time percentages. DOT could require air carriers to tag those flights which are to be excluded from dependability reporting due to mechanical problems. DOT would then have comprehensive data to compute an accurate departure-completion percentage for each airline, as well as the ability to audit carrier compliance with the rules governing mechanical exclusions.

Delta believes the Department should collect and publish the overall scheduled completion rates for all carriers, which is the ratio of total domestic flights scheduled to total domestic flights completed. Nonscheduled and extra-section flights should be excluded because the numbers of such operations vary from carrier to carrier and from season to season and would distort the percentages. Delta believes publishing a completion factor would reward carriers that incur the cost of having spare aircraft and crew available.

IAPA believes that airline passengers should have information on the actual number of flights completed by an airline compared to the number of flights scheduled. All flights should be included regardless of the reason for cancellation, i.e., mechanical or weather problems.

Northwest and Southwest support the publication of completion percentages so long as mechanicals are excluded and

airlines will not be forced to incur any significant additional burden or cost. They believe the reasons for excluding mechanicals from the completion percentages are the same for excluding mechanicals from the on-time reports. Northwest believes that the completion percentage should be based on the number of scheduled departures completed rather than the number of scheduled miles completed.

The National Consumer League believes that one of the deficiencies in DOT's *Air Travel Consumer Report* is the failure to include information on which carriers most often complete their scheduled flights.

TWA believes that the publication of a completion percentage will provide useful information to consumers but, because the information is already available in reports filed with DOT, no further submissions should be required of carriers.

United believes that DOT can readily publish a completion factor from the data that is now reported. However, if mechanicals are once again excluded, United see no benefit of only reporting weather and air traffic-control related cancellations.

USAir states that a completion percentage should be based on the number of scheduled flights completed compared to its number of scheduled flights. Using T-100 data would skew the data, because extra section flights would cause a carrier's completion percentage to be overstated.

Reporting Frequency

American and Delta believes that less frequently reporting would not reduce reporting burden and support monthly reporting.

Northwest believes that significant savings to the airlines, CRS operators and the Department could be realized by the change to quarterly submissions.

Southwest states that less frequent reporting would not significantly reduce the burden on carriers or increase the usefulness of the information to consumers, who receive more current information by monthly, rather than quarterly reports.

TWA supports the continuation of monthly reporting. TWA states that since carriers will still have to collect on-time performance data, it will not make any difference whether they submit the data monthly or quarterly. There is no significant saving from less frequent reporting.

United Air Lines prefers monthly reporting, because consumers benefit from having the most recent and reliable information on which to base their purchasing decisions.

Cost of Reporting

Delta states that it is less costly to report under the current system where carriers report all domestic scheduled passenger flights.

Resubmission of Prior Data To Exclude Mechanicals

Northwest supports the retroactive application of the mechanical-based exclusion in order to preserve the integrity and consumer usefulness of the Department's historical on-time data.

While United Air Lines believes that airlines should continue to include mechanicals in their on-time performance, if the Department decides to exclude them, then the airlines should refile past reports for the intervening months to ensure that all monthly data are comparable and consistent.

Determination

Based on the reporting experience since 1995, the Department has decided to withdraw its notice of proposed rulemaking. There have been no incidents where a carrier operated a flight with an unairworthy aircraft to improve its on-time flight performance. The requirement to report mechanicals may create a market-based incentive for airlines to improve preventive maintenance procedures and to have readily available back-up flight crews and aircraft. Title 15 CFR Part 234 does not specify an on-time flight performance standard that carriers must meet. Rather, the carriers' reports provide consumers with information on carrier performance, which the consumer may use in carrier selection.

The Department compared the carrier rankings for the calendar year 1994 with calendar year 1995. The former period excludes mechanical delays and cancellations, while the latter period includes all flights. With the exception of two carriers, on-time performance percentages were lower in 1995. The lower on-time percentages can be attributed, in part, to the elimination of the mechanical exclusion. We believe the 1995 reports are a more truthful portrayal of air carrier performance.

Because we are continuing current practice, there is no need for collecting and publishing flight completion data. The carriers expressed little interest in reducing filing frequency so we are, therefore, not making any change.

Issued in Washington, DC, on January 19, 1999.

Rodney Slater,
Secretary.

[FR Doc. 99-1698 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-62-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-106564-98]

RIN 1545-AW86

Modifications and Additions to the Unified Partnership Audit Procedures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

SUMMARY: In the Rules and Regulations of this issue of the **Federal Register**, the Internal Revenue Service (Service) is issuing temporary regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The text of those temporary regulations also generally serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 26, 1999. Outlines of topics to be discussed at the public hearing scheduled for April 14, 1999, at 10 a.m. must be received by March 24, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-106564-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-106564-98), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed and temporary regulations, Robert G. Honigman, (202) 622-3050; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Michael L. Slaughter,

Jr., (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary and final regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) relating to the unified partnership audit procedures found in sections 6221 through 6233 of the Internal Revenue Code (Code).

The text of those temporary regulations also generally serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary and proposed regulations.

Temporary regulations previously were published on December 13, 1984 (49 FR 48536), and March 5, 1987 (52 FR 6779) (the existing regulations). The Service intends to finalize such regulations simultaneously with finalizing these regulations. Comments previously received in connection with the existing regulations will be considered as well as new or additional comments with respect to such regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the Service. All comments will be available for public inspection and copying. The Service and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

A public hearing has been scheduled for April 14, 1999, at 10 a.m. in Room 2615, Internal Revenue Building, 1111

Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit electronic or written comments by April 26, 1999 and an outline of the topics to be discussed and the time devoted to each topic (a signed original and eight (8) copies) by March 24, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information. The principal authors of these proposed regulations are Robert G. Honigman, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), and William A. Heard, Office of the Assistant Chief Counsel (Field Service). However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6221-1 as proposed to be added at 51 FR 13235, April 18, 1986, is amended by:

1. Redesignating paragraph (c) as paragraph (e);
2. Adding paragraphs (c) and (d).

The additions read as follows:

§ 301.6221-1 Tax treatment determined at partnership level.

* * * * *

(c) and (d) [The text of proposed paragraphs (c) and (d) are the same as the text of § 301.6221-1T(c) and (d) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 301.6223(c)-1 as proposed to be added at 51 FR 13238, April 18, 1986, is amended by adding a sentence at the end of paragraph (c) to read as follows:

§ 301.6223(c)-1 Additional information regarding partners furnished to the Service.

* * * * *

(c) * * * [The text of the proposed last sentence in paragraph (c) is the same as the text of the last sentence in § 301.6223(c)-1T(c) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 4. Section 301.6224(c)-3 as proposed to be added at 51 FR 13241, April 18, 1986, is amended by revising the section heading and paragraphs (b), (c)(3)(ii) and (d), *Example (1)* to read as follows:

§ 301.6224(c)-3 Consistent settlement terms.

* * * * *

(b) [The text of proposed paragraph (b) is the same as the text of § 301.6224(c)-3T(b) published elsewhere in this issue of the **Federal Register**].

(c) * * *

(3) * * *

(ii) [The text of proposed paragraph (c)(3)(ii) is the same as the text of § 301.6224(c)-3T(c)(3)(ii) published elsewhere in this issue of the **Federal Register**].

(d) * * *

Example (1). [The text of proposed paragraph (d) *Example (1)* is the same as the text of § 301.6224(c)-3T(d) *Example (1)* published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 5. Section 301-6229(b)-2 is added to read as follow:

§ 301.6229(b)-2 Special rule with respect to debtors in Title 11 cases.

[The text of this proposed section is the same as the text of § 301.6229(b)-2T published elsewhere in this issue of the **Federal Register**].

Par. 6. Section 301.6229(f)-1 is added to read as follows:

[The text of this proposed section is the same as the text of § 301.6229(f)-1T

published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 301.6231(a)(1)–1 as proposed to be added at 51 FR 13243, April 18, 1986, is amended by:

1. Revising the first two sentences of paragraph (a)(1);
2. Removing paragraph (a)(3);
3. Redesignating paragraph (a)(4) as paragraph (a)(3).

The revision reads as follows:

§ 301.6231(a)(1)–1 Exception for small partnerships.

(a) * * *

(1) [The text of the proposed first two sentences of paragraph (a)(1) is the same as the text of the first two sentences of § 301.6231(a)(1)–1T(a)(1) published elsewhere in this issue of the **Federal Register**]. * * *

* * * * *

Par. 8. Section 301.6231(a)(6)–1 as proposed to be added at 51 FR 13245, April 18, 1986, is amended by:

1. Revising paragraph (a);
2. Removing paragraph (c).

The revision reads as follows:

§ 301.6231(a)(6)–1 Computational adjustments.

(a) [The text of proposed paragraph (a) is the same as the text of § 301.6231(a)(6)–1T(a) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 9. Section 301.6231(a)(7)–1 is amended by revising paragraphs (p)(2), (r)(1) and (s) to read as follows:

§ 301.6231(a)(7)–1 Designation or selection of tax matters partner.

* * * * *

(p) * * *

(2) *When each general partner is deemed to have no profits interest in the partnership.* If it is impracticable under paragraph (o)(2) of this section to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in paragraph (q) of this section. The Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a), effective as of the date specified in the notice.

* * * * *

(r) * * * (1) *In general.* If the Commissioner selects a tax matters partner under the provisions of paragraph (p)(1) or (3)(i) of this section, the Commissioner will notify, within 30 days of the selection, the partner

selected, the partnership, and all partners required to receive notice under section 6223(a), effective as of the date specified in the notice.

* * * * *

(s) *Effective date.* This section applies to all designations, selections, and terminations of a tax matters partner occurring on or after December 23, 1996, except for paragraphs (p)(2) and (r)(1), that are applicable on the date they are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue Service.

[FR Doc. 99–886 Filed 1–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–99–002]

RIN 2115–AA98

Anchorage Grounds; Atlantic Ocean off Miami and Miami Beach, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the Anchorage Regulations for the Atlantic Ocean off Miami and Miami Beach, FL. The amendment is needed to strengthen existing anchoring requirements and guidelines in order to provide a higher degree of protection to the coastal area during periods of adverse weather which could cause anchored vessels to drag anchor and strike other vessels or become grounded.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Marine Safety Office Miami, 100 MacArthur Causeway Miami Beach, Florida 33139, or may be delivered to the same address between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 535–8705. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: CWO Marcos DeJesus, Coast Guard Marine Safety Office Miami, at (305) 535–8762.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this

rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–99–002] and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

The east coast of Florida is susceptible to many erratic weather changes, and mariners who are not vigilant to the seas often discover themselves in dangerous situations. In recent years, a number of vessel groundings have resulted from vessels dragging anchor and drifting into the beach or onto reefs during bad weather. These amendments are intended to reduce these incidents by modifying the existing anchoring requirements and guidelines to account for possible adverse weather situations. The amended regulations will require vessels to notify the Captain of the Port when entering the anchorage areas and when any casualty or work affects the main propulsion or steering equipment. All vessels will also be required to have an English speaking watchstander monitor Channel 16 VHF at all times.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard

must consider whether this proposed rule, if adopted will have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this will not have a significant economic impact on a substantial number of small entities as it will only affect anchored vessels in the waters off Miami and Miami Beach and the changes are minor in nature.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2-1, paragraph 34(f) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.188 add new paragraphs (b)(9), (b)(10) and (b)(11) to read as follows:

§ 110.188 Atlantic Ocean off Miami and Miami Beach, FL

* * * * *

(b) The regulations. * * *

(9) All vessels desiring to use the Anchorage must notify the Coast Guard Captain of the Port, via the Biscayne Bay Pilots on VHF-FM Channel 12 or 16.

(10) All vessels anchored within the anchorage area shall maintain a 24-hour bridge watch by an English speaking licensed deck officer monitoring VHF-FM Channel 16. This individual shall perform frequent checks of the vessel's position to ensure the vessel is not dragging anchor.

(11) Vessels experiencing casualties such as a main propulsion, main steering or anchoring equipment malfunction or which are planning to perform main propulsion engine repairs or maintenance, shall immediately notify the Coast Guard Captain of the Port via the Coast Guard Group Miami on VHF-FM Channel 16.

(12) The Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety.

N.T. Saunders,

*RADM, U.S. Coast Guard, Commander,
Seventh Coast Guard District.*

[FR Doc. 99-1696 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07-98-079]

RIN 2115-AA98

Anchorage Grounds; Port Everglades, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the Anchorage Regulations for Port Everglades, FL. The amendment is needed to strengthen existing anchoring requirements and guidelines in order to provide a higher degree of protection to the coastal area during periods of adverse weather, which could cause anchored vessels to drag anchor and strike other vessels or become grounded.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Marine Safety Office Miami, 100 MacArthur Causeway Miami Beach, Florida 33139, or may be

delivered to the same address between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 535-8705. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT:

CWO Marcos DeJesus, Coast Guard Marine Safety Office Miami, at (305) 535-8762.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07-98-079] and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

The east coast of Florida is susceptible to many erratic weather changes, and mariners who are not vigilant to the seas often discover themselves in dangerous situations. In recent years, a number of vessel groundings have resulted from vessels dragging anchor and drifting into beach or onto reefs during bad weather. These amendments are intended to reduce these incidents by modifying the existing anchoring requirements and guidelines to account for possible adverse weather situations. The amended regulations will require vessels to notify the Captain of the Port when entering the anchorage areas and when any casualty or work affects the main propulsion or steering equipment. The proposed regulations will also require vessels to have an English speaking watchstander monitor Channel 16 VHF at all times.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted will have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities as it will only effect anchored vessels in the waters off Port Everglades and the changes are minor in nature.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2-1, paragraph 34(f) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. An environmental analysis checklist and Categorical Exclusion Determination will be completed during the comment period.

List of Subjects in 33 CFR Part 110

Anchorage grounds

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The Authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Revise § 110.186(b) to read as follows:

§ 110.186 Port Everglades, Florida.

* * * * *

(b) *The regulations.*

(1) Commercial vessels in the Atlantic Ocean in the vicinity of Port Everglades shall anchor only within the anchorage area hereby defined and established, except in cases of emergency.

(2) Prior to entering the anchorage area, all vessels shall notify the Coast Guard Captain of the Port, via the Port Everglades Harbormaster, on VHF-FM Channel 14.

(3) All vessels within the anchorage area shall maintain a 24-hour bridge watch by an English speaking licensed deck officer monitoring VHF-FM Channel 16. This individual shall perform frequent checks of the vessel's position to ensure the vessel is not dragging anchor.

(4) Vessels experiencing casualties such as a main propulsion, main steering or anchoring equipment malfunction or which are planning to perform main propulsion engine repairs or maintenance, shall immediately notify the Coast Guard Captain of the Port via the Coast Guard Group Miami on VHF-FM Channel 16.

(5) The Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety.

(6) Commercial vessels anchoring under emergency circumstances outside the anchorage area shall shift to new positions within the anchorage area immediately after the emergency ceases.

N.T. Saunders,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99-1695 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL-6223-4]

New Source Review (NSR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public meeting.

SUMMARY: This is an announcement of a public meeting on February 2-3, 1999 to discuss an approach for changing the NSR applicability criteria and implementation of control technology requirements. Rulemaking was proposed on July 23, 1996 that would revise numerous requirements in the regulations governing the NSR programs mandated by parts C and D of title I of the Clean Air Act. See 61 FR 38249. A supplemental notice on certain applicability issues was published for comment on July 24, 1998. See 63 FR 39857.

DATES: The meeting will convene at 10:00 a.m. on February 2, 1999, and at 9:00 a.m. on February 3, 1999. It will end no later than 12:00 noon on February 3, 1999.

ADDRESSES: The meeting will be held at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, Northwest, Washington, DC 20004-1710, telephone (202) 393-2000. Documents related to the NSR Reform Rulemaking, are available for public inspection in the EPA Air Docket No. A-90-37. All written documents submitted at this public meeting will be placed in the Docket within approximately 2 weeks after the meeting. The Docket is available for public inspection and copying between 8:00 a.m. to 5:00 p.m., weekdays, at the EPA's Air Docket (6102), Room M-1500, 401 M Street, Southwest, Washington, DC 20460. A reasonable fee may be charged for copying.

A copy of a letter issued to specific stakeholders is available to the public on the EPA's NSR Website at http://www.epa.gov/ttn/nsr/rule_dev.html. This provides additional information regarding presentations that might be made by stakeholders at the meeting.

FOR FURTHER INFORMATION CONTACT: For questions concerning the topics to be discussed, please contact Dennis Crumpler at (919) 541-0871, telefax (919) 541-5509, E-mail:

crumpler.dennis@epa.gov or by mail at U.S. EPA, OAQPS, Information Transfer and Program Integration Division (MD-12), Research Triangle Park, North Carolina 27711.

As of the date of this announcement, the Agency intends to proceed with the meeting as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public planning to attend this meeting are advised to contact Pam Smith, U.S. EPA, OAQPS, Information Transfer and Program Integration Division (MD-12), Research Triangle Park, North Carolina 27711; telephone (919) 541-0641 or E-mail: smith.pam@epa.gov, to confirm the February 2-3, 1999 meeting location and dates.

SUPPLEMENTARY INFORMATION: The EPA's preliminary thinking about seating arrangements is that seating around a discussion table will be reserved for 40-45 people divided equally among representatives from: (1) the industrial sector, (2) the public interest groups, (3) State and local governments or agencies, and (4) the Federal government. The EPA does not anticipate that it will be able to provide more than one seat at the table for each industrial sector. There will be additional seating, theater style, in the meeting room, available on a first come first served basis, for about 50 people. To the extent possible, everyone who wishes to speak or make a presentation will have an opportunity. An agenda will be provided at the meeting. If you plan to attend the meeting, please E-mail or call Pam Smith, at E-mail address smith.pam@epa.gov or telephone number (919) 541-0641, by January 28. Please also indicate whether you plan to give a presentation.

Dated: January 15, 1999.

Bruce C. Jordan,

Deputy Director, Office of Air Quality Planning and Standards.

[FR Doc. 99-1645 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX86-1-7351b; FRL-6208-4]

Approval and Promulgation of Implementation Plans, Texas; Reasonably Available Control Technology for Emissions of Volatile Organic Compounds (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking direct final action on demonstrations submitted by Texas on January 10, 1996, that

Reasonably Available Control Technology (RACT) is in place on sources in the following source categories: Volatile Organic Liquid (VOL) Storage, Synthetic Organic Chemical Manufacturing Industry Reactor and Distillation Processes and Plastic Parts coating. Also EPA is taking direct final action on revisions to the Texas Rules for the control of VOC emissions that the State submitted between 1995 and 1997. Finally, for most of the measures given limited approval in the May 22, 1997 **Federal Register** (62 FR 27964), this direct final action converts the limited approval to a full approval.

In the Rules and Regulations section of this **Federal Register**, we are approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no relevant adverse comments, we will not take further action on this proposed rule. If we receive relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. We will address all relevant public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received by February 25, 1999.

ADDRESSEES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665-7242.

SUPPLEMENTARY INFORMATION: For further information, please see the

information provided in the direct final action of the same title that is located in the "Rules and Regulations" section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401-7671q.

Dated: December 10, 1998.

Sam Becker,

Acting Regional Administrator, Region 6.

[FR Doc. 99-1651 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA024-5037; FRL-6223-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reasonably Available Control Technology for Major Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing conditional limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires the implementation of reasonably available control technology (RACT) on major sources of nitrogen oxides (NO_x) in the northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The intended effect of this action is to propose conditional limited approval of Virginia regulations to impose RACT on major sources of NO_x.

DATES: Comments must be received on or before February 25, 1999.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and

the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814-2092. Or by e-mail at gaffney.kristeen@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 1992, the Commonwealth of Virginia submitted a revision to its State Implementation Plan (SIP). This SIP revision consisted of regulations to establish reasonably available control technology (RACT) requirements on major sources of nitrogen oxides (NO_x) in the northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The Commonwealth submitted additional materials to supplement the November 9, 1992 SIP revision on December 11, 1992 and again on April 11, 1998. This action is being taken under section 110 of the Clean Air Act (the Act).

Section 182(f) of the Act requires states to submit rules to implement RACT on major sources of NO_x in ozone nonattainment areas designated as moderate or above and throughout the Ozone Transport Region. The definition of major source is determined by the classification of the nonattainment area and whether or not it is located in the Ozone Transport Region. A portion of Northern Virginia is part of the Metropolitan Washington D.C. serious ozone nonattainment area and that same portion of Virginia is in the Ozone Transport Region. Therefore, sources in the Northern Virginia portion of the Washington D.C. nonattainment area which emit or have the potential to emit 50 tons or more of NO_x per year are considered major and are subject to the NO_x RACT requirements of the Act.

On November 9, 1992, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP consisting of adopted regulations to impose NO_x RACT on major sources in the northern Virginia nonattainment area. The VADEQ supplemented its November 1992 submittal on December 11, 1992. On August 11, 1998, the VADEQ made a submittal to EPA withdrawing certain provisions of the November 9, 1992 submittal, and forwarding revisions that corrected typographical errors and recodified and renumbered one of the relevant regulations, Appendix T [now 9 VAC 5-40-311].

II. Description of the SIP Revision Submittal

The November 9, 1992 submittal consisted of revisions to Virginia Regulation (VR) 120-01, Part IV, Emission Standards for General Process Operations (Rule 4-4) and to Appendix T, entitled "Reasonably Available Control Technology Guidelines for Stationary Sources of Nitrogen Oxides". Rule 4-4 was amended to insert a new section, 120-04-0408, entitled "Standard for nitrogen oxides". To accommodate the insertion of section 120-04-0408, the revision also renumbered the previously existing sections 120-04-0408 through 120-04-0418, inclusive, as sections 120-04-0409 through 120-04-0419, inclusive. On April 11, 1998, the VADEQ submitted a revised version of Appendix T to correct a technical error in the Virginia Register version of the final rule dated November 30, 1992. This error was corrected by Virginia in the Virginia Register on June 23, 1997. On April 11, 1998, the Commonwealth submitted the corrected version of Appendix T. In addition to the typographical correction, the Commonwealth also recodified Appendix T and renumbered it as 9 VAC 5-40-311.

Section 120-04-0408, entitled "Standard for nitrogen oxides" has five subsections:

Subsection (A) prohibits owners or other persons of affected facilities from permitting or causing NO_x emissions in excess of that resulting from using RACT.

Subsection (B) requires that compliance with RACT under subsection (A) be that defined in Appendix T [now 9 VAC 5-40-311] unless the source owner demonstrates otherwise to the satisfaction of the Virginia Air Pollution Control Board (the Board).

Subsection (C) defines which facilities are subject to the rule. NO_x RACT applies to all stationary sources located in the Northern Virginia Emissions Control Area that have a theoretical potential to emit of 50 tons per year or greater of NO_x. Subsection (C) also provides guidance on the calculation of "theoretical potential to emit" for determining applicability of 120-04-0408.

Subsection (D) requires owners of facilities subject to subsection (A) to notify the Board of applicability status, to commit to making a determination of what constitutes RACT and to submit a schedule to the Board for making this determination. Compliance with RACT is to be achieved as expeditiously as

practicable but no later than May 31, 1995.

Subsection (E) requires owners of facilities subject to subsection (B) to notify the Board of applicability status, to commit to accepting an applicable standard in Appendix T or to submit a demonstration of RACT, and to provide a schedule for submitting that demonstration no later than January 1, 1994. Compliance with RACT is to be achieved as expeditiously as practicable but no later than May 31, 1995.

Appendix T [now 9 VAC 5-40-311] consists of four sections:

Section A—General states that RACT required by section 120-04-0408 is as defined in this section for certain source types unless approved otherwise by the Board.

Section B—Definitions defines various terms. The following terms are defined: "capacity factor", "combustion modification", "combustion unit", "fossil fuel", "fuel burning equipment", "fuel burning equipment installation", "gas turbine", "heat input", "incinerator", "internal combustion engine", "process heater", "rated capacity", "refuse derived fuel", "steam generating unit", and "total capacity".

Section C—Definition of reasonably available control technology defines emission limits as RACT for steam generating units, process heaters and gas turbines and requires RACT to be demonstrated on a daily basis. Section C of VAC 5-40-311 also exempts certain source categories and/or applicability thresholds for source categories from the requirement to demonstrate RACT under subsection 120-04-0408 (B). On August 11, 1998, VADEQ withdrew subdivisions C.3.a. and C.3.c. of section C. of 9 VAC 5-40-311 (formerly Appendix T) from its SIP revision submittal pending before EPA. Therefore, the provisions of subdivisions C.3.a. and C.3.c. of 9 VAC 5-40-311 are not being considered for approval as part of the Virginia SIP.

Section D—Emission Allocation System—On August 11, 1998, VADEQ withdrew section D of 9 VAC 5-40-311 (formerly section IV of Appendix T) from its SIP revision submittal pending before EPA. Therefore, the provisions of section D of 9 VAC 5-40-311 are not being considered for approval as part of the Virginia SIP.

III. EPA's Evaluation of the SIP Revision

A. Applicability

The provisions of section 120-04-0408, Standard for Nitrogen Oxides, apply to all sources in the Northern Virginia Emissions Control Area having

a theoretical potential to emit 50 or more tons per year of NO_x. The Northern Virginia Emissions Control Area consists of the counties of Arlington, Fairfax, Loudoun, Prince William and Stafford, and the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park. The geographical coverage of the Northern Virginia Emissions Control Area is the same as the Virginia portion of the designated Metropolitan Washington

D.C. ozone nonattainment area. Virginia's section 120-04-0408 covers the same area as that required by section 182(f) of the Act for the Virginia portion of the Washington D.C. ozone nonattainment area, and meets the requirements for approval.

B. Presumptive RACT Emission Limits for Steam Generating Units/Process Heaters and Gas Turbines

Section C of 9 VAC 5-40-311 (formerly Appendix T) establishes

presumptive RACT emission limits for steam generating units, process heaters and gas turbines. Subdivision C.1.a. sets limits for steam generating units and process heaters with a rated capacity of 100 or greater million British Thermal Units per hour (MMBTU/hr) as indicated in Table 1, below.

TABLE 1

Fuel type	Face* and tangential firing	Cyclone firing	Stokers
Coal—wet bottom	1.0 lbs/MMBTU	.55 lbs/MMBTU	N/A.
Coal—dry bottom	.38 lbs/MMBTU	N/A	.4 lbs/MMBTU.
Oil or Gas or both	.25 lbs/MMBTU	.43 lbs/MMBTU	N/A
Gas only	.20 lbs/MMBTU	N/A	N/A

*Includes wall, opposed and vertical firing methods.

Subdivision C.1.b. of 9 VAC 5-40-311 (formerly Appendix T) sets presumptive RACT limits for gas turbines. All limits for gas turbines are expressed in terms of dry volume corrected to 15 percent oxygen. RACT for gas-fuel, simple or combined cycle turbines, is 42 parts per million dry volume (ppmvd) of NO_x. RACT for oil-fueled simple or combined cycle units, is 65 ppmvd NO_x when the fuel bound nitrogen content is less than 0.015 percent and a limit of 77 ppmvd when the fuel bound nitrogen content is greater than or equal to 0.015 percent.

Subdivision C.2. of 9 VAC 5-40-311 requires that compliance with the limits set in C.1.a. and b. shall be met on a daily basis. EPA is proposing to approve the provisions of C.1.a. and b. and C.2. of 9 VAC 5-40-311 (formerly Appendix T) as RACT for utility boilers, process heaters and gas turbines.

C. Compliance

Subsections 120-04-0408 (D) and (E) require compliance with RACT as expeditiously as practicable but not later than May 31, 1995. This meets the corresponding requirement under section 182(f) of the Act and is approvable. The following sections of Virginia's general provisions are cross-referenced and apply to all sources subject to NO_x RACT: 120-04-0413 Compliance; 120-04-0414 Test methods and procedures; 120-04-0415 Monitoring; 120-04-0416 Notification, records and reporting; 120-04-0417 Registration; 120-04-0418 Facility maintenance or malfunction; and 120-04-0419 Permits. These provisions are all SIP approved, and, therefore, section 120-04-0408 satisfies appropriate

requirements for record-keeping, monitoring and compliance.

D. Exempted Sources

Provisions found at subdivision C.3.b. of 9 VAC 5-40-311 (formerly Appendix T) exempt any steam generating unit, gas turbine, or process heater with an annual capacity factor of less than five percent from the requirement to demonstrate RACT.

However, within three months following any calendar year in which the capacity factor exceeds five percent, a source becomes subject to subsection 120-04-0408 (A) or (B)—which require compliance with a RACT limit set presumptively or on a case-by-case basis—and the owner must make the notification and submittal required under subsection 120-04-0408 (D) or (E)—which require notification of applicability status. In this case, the compliance date is two years after the Board approves the schedule submitted by the source owner. Provisions of subdivision C.3.b. also provide that time periods in which a stand-by unit is used to provide replacement services for a unit being altered to comply with RACT are not to be included in the determination of the annual capacity factor for the stand-by unit.

Provisions found at subdivision C.3.d. of 9 VAC 5-40-311 (formerly Appendix T) exempt any stationary internal combustion engine with a rated capacity of less than 450 horsepower output from the requirement to demonstrate RACT.

Provisions found at subdivision C.3.e. of 9 VAC 5-40-311 (formerly Appendix T) exempt any incinerator with a maximum capacity of less than 50 tons

of waste per day from the requirement to demonstrate RACT.

Provisions found at subdivision C.3.f. of 9 VAC 5-40-511 (formerly Appendix T) exempt any incinerator or thermal or catalytic oxidizer used exclusively as air pollution control equipment from the requirement to demonstrate RACT.

Provisions found at subdivision C.3.g. of 9 VAC 5-40-311 exempt any generator used solely to supply emergency power to buildings during periods when normal power supplies are interrupted and during periods of scheduled maintenance from the requirement to demonstrate RACT.

In a memorandum from G.T. Helms of the Office of Air Quality Planning & Standards (OAQPS) to the Regional Air Branch Chiefs, dated January 1, 1995, entitled "De Minimis Values for NO_x RACT", EPA provides guidance and technical data that may be used to evaluate de minimis levels for various categories of NO_x sources. Traditionally, regulatory agencies have typically included exemptions for very small emission units in volatile organic compound (VOC) RACT rules. The reason for the exemption is that control requirements at very small units are generally not reasonable, considering technological and economic feasibility. In the process of adopting rules to meet the NO_x RACT requirements of the Clean Air Act, many states have included exemptions in their state rules for very small or infrequently used NO_x emission sources similar to the VOC rule exemptions. Total annual emissions from certain units at a facility, such as small incinerators, emergency generators and peaking units, may be so

small that it is clear that no controls are reasonably available for such units. Based on the description of de minimis level of NO_x emissions from small units, EPA agrees that it is reasonable to exclude the source categories as provided in subdivisions C.3.b, C.3.d, C.3.e, C.3.f, and C.3.g of 9 VAC 5-40-311 (formerly Appendix T) of Virginia's regulations from RACT requirements.

E. Generic Provisions

Rule 120-04-0408 requires certain sources to comply with the applicable emission limits established in Appendix T (now known as 9 VAC 5-40-311); or to apply to the Board for an alternative emission limit through a source-specific RACT determination process. The emission limits of section C of 9 VAC 5-40-311 do not cover all categories of NO_x sources. Section C specifically enacts emission limits for boilers/steam generating units, process heaters and gas turbines. Other source categories, such as incinerators, reciprocating internal combustion engines, cement manufacturing and iron/steel manufacturing are not covered in 9 VAC 5-40-311.

These sources are not subject to specific, "up-front" (i.e. immediately ascertainable) emission limitations. Instead, the regulations establish a process for the Commonwealth to review and approve individual RACT emission limitations proposed by the sources, which are then to be submitted to EPA as SIP revisions. Additionally, subsection 120-04-0408(B) of Virginia's rule allows sources subject to the presumptive limits in Appendix T (now known as 9 VAC 5-40-311) to propose alternative RACT on a case-by-case basis provided they submit the proposal by January 1, 1994. The proposal must include technical and economic support documentation for the proposed RACT and include a schedule for compliance as expeditiously as practical but no later than May 31, 1995.

The Act requires states to implement RACT on all major stationary sources. Process-oriented generic regulations, such as those submitted by Virginia, which do not include specific and ascertainable emission limitations for all major sources, do not by themselves provide standards for EPA to approve or disapprove as satisfying the definition of RACT. Therefore, the Act's RACT requirements are satisfied only after the specific limitations imposed by the Commonwealth on its major sources have been submitted to EPA as SIP revisions and approved by EPA as RACT for the subject sources.

In a November 7, 1996 policy memo from Sally Shaver, Director, Air Quality

Strategies and Standards Division of OAQPS, EPA issued guidance for approving state generic RACT regulations, like Virginia's, provided certain criteria are met. This guidance does not exempt any major source from RACT requirements but instead provides for a de minimis deferral of RACT only for the purposes of approving the state's generic RACT regulation. The de minimis deferral level is determined by using the 1990 NO_x emissions, excluding the utility boiler NO_x emissions. The remaining 1990 non-utility boiler emissions are then compared with the amount of non-utility NO_x emissions that have yet to have RACT approved into the SIP. Generally, EPA expects that all utility boiler RACTs will be approved prior to application of this de minimis deferral policy and possible conversion of the generic RACT conditional approval to full approval. EPA does not expect to defer more than 5% of the emissions calculated in this manner in order to fully approve Virginia's generic NO_x RACT regulation. In accordance with the November 1996 policy, EPA is requiring that all utility boiler RACT determinations be approved by EPA and all but a de minimis level of non-utility boiler RACT determinations be approved into the SIP before the limited approval can be converted to full approval. Full approval of a generic RACT regulation under this policy does not change the Commonwealth's statutory obligation to implement RACT for all major sources. No major NO_x source is being exempted from RACT requirements through this policy or today's rulemaking.

Because EPA has not received SIP revisions of source-specific RACT determinations for all major sources of NO_x subject to RACT under the Clean Air Act, EPA can at best, according to the November 7, 1996 policy memorandum, propose conditional limited approval of the NO_x RACT generic rule. In support of this proposed rulemaking, the Commonwealth committed in a letter dated April 11, 1998 to submit, as SIP revisions, RACT determinations for all sources subject to NO_x RACT within 12 months of EPA's final conditional approval of the generic rule.

F. Virginia's Audit Privilege Legislation

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either

asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *" Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Thus, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its

program consistent with the federal requirements.

Terms of and Rationale for Conditional Approval

EPA is proposing conditional approval of Virginia's NO_x RACT regulations, based on the Commonwealth's commitment to submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to RACT requirements currently known to the Virginia Department of Environmental Quality (VADEQ). The Commonwealth submitted this commitment in a letter to EPA, dated August 11, 1998. The case-by-case RACT proposals must be submitted by a date certain that is no later than 12 months after the effective date of EPA's final conditional approval.

To fulfill the conditions of this approval, the Commonwealth must, by no later than 12 months after the effective date of EPA's final conditional approval of the generic NO_x RACT SIP, (1) certify that it has submitted case-by-case RACT SIPs for all sources subject to the RACT requirements currently known to the Department; or (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions (as described above). Once EPA has determined this condition, EPA shall remove the conditional nature of its approval and the Virginia NO_x RACT regulations will, at that time, retain limited approval status. Should the Commonwealth fail to meet the conditions specified above, the final conditional limited approval of the NO_x RACT regulations SIP revision shall convert to a disapproval.

EPA is also proposing limited approval of Virginia's NO_x RACT regulations, VA Rule 120-08-0408, and the provisions of 9 VAC 5-40-311 (formerly Appendix T) as requested by the VADEQ. The current Virginia SIP does not contain a general requirement that all major sources of NO_x must implement RACT. While EPA does not believe that the Virginia generic NO_x RACT regulation satisfies the Act's RACT requirements as discussed previously in this notice, EPA is also proposing limited approval of the Virginia NO_x RACT regulations on the basis that they strengthen the SIP. The purpose of the proposed approval of the presumptive limits as RACT for these categories of sources of NO_x is for the limited purpose of strengthening the Virginia SIP by adding RACT standards for sources of NO_x in the Northern Virginia Emissions Control Area where none existed before.

Section 110(k)(4) of the Act allows EPA to propose conditional approval of the Virginia RACT regulations based on a commitment by the Commonwealth to adopt specific enforceable measures by a date certain but no later than 1 year after the effective date of EPA's final conditional approval. On August 11, 1998, Virginia submitted a letter to EPA committing to submit all case-by-case RACT determinations to EPA as SIP revisions within 12 months of final conditional, limited rulemaking, including those for sources covered by new source review permits, subject to the presumptive RACT limits, and previously exempted from the state regulations. Once EPA determines that the Commonwealth has satisfied the conditions in this notice, EPA shall remove only the conditional nature of its approval and the NO_x RACT regulations will, at that time, retain limited approval status. Once EPA has approved all of the case-by-case RACT proposals as SIP revisions, the limited approval will convert to full approval. Therefore, even after the conditional status of EPA's approval of Virginia's regulations is removed, VADEQ must still continue to submit, and have EPA approve into the Virginia SIP, RACT requirements for the remaining de minimis amount of emissions. Removal of the conditional status to limited approval status in no way changes VADEQ's statutory obligation to implement RACT for all major sources. Although EPA fully expects that Virginia will meet the conditions set forth in this notice, should Virginia fail to meet the conditions in this notice, EPA is proposing that the final conditional limited approval shall convert to a disapproval.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. A more detailed description of the state submittal and EPA's evaluation are included in the Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing conditional limited approval of the Commonwealth's NO_x RACT SIP submittal of November 9, 1992, as modified on December 11, 1992 and April 11, 1998. EPA is proposing

conditional limited approval of this SIP revision based on the commitment made by Virginia to submit all case-by-case RACT proposals for sources it is currently aware of as being subject to the major source NO_x RACT requirement, and because adding RACT standards for major sources of NO_x in the Northern Virginia Emissions Control Area where none existed before strengthens the SIP. On August 11, 1998, Virginia submitted a letter to EPA committing to submit all case-by-case RACT determinations to EPA as SIP revisions within 12 months of final conditional, limited rulemaking.

V. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental

health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 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 EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This

proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action of Virginia's NO_x RACT regulations do not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the

private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone.

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

Dated: January 7, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99-1648 Filed 1-25-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-6225-5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Kansas City ozone maintenance area experienced a violation of the National Ambient Air Quality Standard (NAAQS) for ozone in 1995. In response to this violation, Kansas submitted revisions to its ozone maintenance plan. These revisions pertain to the implementation of control strategies to achieve reductions in volatile organic compound (VOC) emissions within the Kansas portion of the Kansas City ozone maintenance area. A major purpose of these revisions is to provide a more flexible approach to maintenance of acceptable air quality levels in Kansas City, while achieving emission reductions equivalent to those required by the previously approved plan.

The EPA is proposing to conditionally approve the 1998 revisions to the Kansas City ozone maintenance plan as a revision to the Kansas State Implementation Plan (SIP). Final approval is contingent upon Kansas' submission of additional, enforceable control measures.

In a separate **Federal Register** notice published today, the EPA is also proposing conditional approval of a similar plan submitted by the Missouri Department of Natural Resources to address the Missouri portions of the ozone maintenance area.

DATES: Comments on this proposed rule must be received in writing on or before February 25, 1999.

ADDRESSES: Comments may be mailed to Royan Teter, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document are available for public review at the above address.

FOR FURTHER INFORMATION CONTACT: Royan Teter at (913) 551-7609.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas City metropolitan area (KCMA), consisting of Clay, Platte, and Jackson Counties in Missouri, and Johnson and Wyandotte Counties in Kansas, was designated nonattainment for ozone in 1978. The Clean Air Act (CAA) provides for areas with a prescribed amount of air quality data showing attainment of the standard to be redesignated from nonattainment to attainment, if the requirements of section 107(d)(3)(E) are met. One of these requirements is for the area to adopt a maintenance plan consistent with the requirements of section 175A. This plan must demonstrate attainment of the NAAQS with a margin of safety sufficient to remain in attainment for ten years. Also, the plan must contain a contingency plan to be implemented if the area once again violates the standard.

Ozone monitoring data from 1987 through 1991 demonstrated that the Kansas City nonattainment area had attained the ozone NAAQS. In accordance with the CAA, the Kansas Department of Health and Environment (KDHE) revised the ozone SIP for the Kansas portion of the Kansas City area to recognize the area's attainment status. The EPA published final approval of the Kansas SIP on June 23, 1992. The SIP became effective on July 23, 1992 (57 FR 27939). This action effected the redesignation of the area to attainment.

The contingency plan approved as part of the 1992 SIP identified four measures which were to be implemented upon subsequent violation of the standard in the Kansas City area. These contingency measures required: (1) certain new or expanding sources of ozone precursors to acquire emissions offsets; (2) the installation of Stage II vapor recovery systems at retail gasoline stations or the implementation of an enhanced inspection and maintenance (I/M) program for motor vehicles; (3) the implementation of transportation control measures achieving a 0.5 percent reduction in areawide VOC

emissions; and (4) the completion of a comprehensive emissions inventory.

In a letter from Dennis Grams, EPA Region VII Administrator, to James J. O'Connell, KDHE Secretary, on January 31, 1996, the EPA informed the KDHE of a violation of the ozone NAAQS. Quality-assured air quality monitoring data indicated measured exceedances of the ozone standard on July 11, 12, and 13, 1995, at the Liberty monitoring site in Kansas City. The highest recorded value for each day was 0.128 ppm, 0.161 ppm, and 0.131 ppm, respectively. These exceedances, in combination with the measured exceedance of 0.128 ppm recorded on July 29, 1993, constitute a violation of the standard.

As a result of this violation, Kansas was required to implement the contingency measures identified in the approved SIP. In a July 28, 1995 letter from Roger Randolph (Air Pollution Control Program Director) to William Spratlin (Air, RCRA, and Toxics Division Director), Missouri requested guidance on responding to the KCMA ozone violation. Specifically, Missouri requested flexibility in utilizing control measures other than those identified in the approved SIP. Via an August 17, 1995, letter from William Spratlin to Roger Randolph, the EPA affirmed that Missouri and Kansas may substitute other contingency measures for those in the approved SIP, provided: (1) the substitute measures would achieve substantially equivalent emission reductions; (2) the substitute measures were submitted as a SIP revision; and (3) the substitute measures were implemented before the 1996 ozone season. It must be emphasized that this flexibility was extended to both Kansas and Missouri.

To address the short-term need to control emissions, Kansas promulgated a rule to limit the Reid Vapor Pressure (RVP) of the gasoline sold during the summer months in the KCMA to 7.2 per square inch (psi) (K.A.R. 28-19-79). This regulation became effective May 2, 1997. The EPA published final approval of Kansas' RVP rule on July 7, 1997 (**Federal Register** Vol. 62, No. 129, 36212). The approval became effective on August 6, 1997.

To address the longer-term need to reduce VOC and nitrogen oxides (NO_x) emissions, the Mid-America Regional Council's Air Quality Forum (MARC AQF), comprised of representatives from local governments, business, and health and environmental organizations, agreed to examine various alternative control strategies and recommend a suite of viable measures to Missouri and Kansas. The AQF recommended: (1) expanding public education efforts; (2)

low RVP gasoline; (3) motor vehicle I/M, (4) seasonal no-fare public transit; (5) a voluntary clean fuel fleets program; and (6) additional transportation control measures. The AQF also recommended a group of supplemental measures aimed at reducing ozone levels. The emissions reductions associated with the voluntary measures, specifically clean fuel fleets and transportation control, cannot be quantified due to their voluntary nature.

The Missouri Department of Natural Resources (MDNR) presented a maintenance SIP, with the AQF recommendations, to the Missouri Air Conservation Commission (MACC) on June 24, 1997. At that time, the MACC recommended inclusion of a more timely and less politically sensitive control measure in place of the I/M provision. As a result, on October 7, 1997, the AQF recommended the implementation of a reformulated gasoline (RFG) program in the KCMA. In response, Kansas intends to include RFG as a control measure in a year 2000 transitional attainment plan to demonstrate compliance with the revised NAAQS for ozone, should the area be eligible for transitional nonattainment status outlined in the President's July 16, 1997, directive to Administrator Browner. The intent is to have the RFG control measure in place prior to the beginning of the 2001 ozone season. Kansas reserves the option to use gasoline blends other than the Federal RFG blend, provided their use achieves similar VOC and NO_x emission reductions.

The final state submittal includes an emissions inventory; the two creditable control strategies—7.2 RVP gasoline, RFG; additional unquantifiable measures including voluntary clean fuel fleets and seasonal low-fare transit; continued monitoring; verification of continued attainment; and a contingency plan.

Because limiting the RVP of gasoline to 7.2 psi achieves VOC emissions reductions of only 4.0 tons per day, additional reductions are necessary to provide for reductions substantially equivalent to those obtainable by implementing the contingency measures approved in the 1992 SIP. The implementation of an RFG program is therefore critical to meeting Kansas' obligation to achieve the necessary reductions.

II. Evaluation Criteria

To evaluate the maintenance plan, the EPA referred to requirements of section 175A of the Act. The EPA also issued guidance specifically to address applicable procedures for handling

redesignation requests, including maintenance plan provisions "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, to EPA Regional Division Directors, dated September 4, 1992. In addition, the EPA reviewed the revised maintenance plan for evidence that the substitute control measures provide for emissions reductions which are substantially equivalent to those approved in the 1992 SIP, pursuant to guidance given in the August 17, 1995, letter, from William Spratlin to Roger Randolph. Finally, the EPA evaluated the revised maintenance plan with respect to the "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM₁₀ NAAQS," from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators.

III. Review of Submittal

According to the September 4, 1992, memo from John Calcagni regarding "Procedures for Processing Requests to Redesignate Areas to Attainment," a maintenance plan must provide for maintenance of the ozone NAAQS for at least ten years after redesignation. Section 175A of the CAA defines the general framework of a maintenance plan. The Calcagni memo identifies the following list of core provisions necessary to ensure maintenance of the ozone NAAQS: emissions inventory, maintenance demonstration (including control measures), air monitoring network, verification of continued attainment, and a contingency plan. Below is a discussion of each of these provisions, as addressed in the 1998 Revision to the Kansas City State Implementation Plan for Control of Ozone.

A. Emissions Inventory

The emissions inventory for the KCMA was revised in 1995. In a direct final rule (61 FR 18251), published on April 25, 1996, the EPA approved the revised emissions inventory. The emissions inventory estimated VOC and NO_x actual emissions for 1990 and 1992 while using industrial growth factors to project VOC and NO_x emissions for 1995, 2000, 2005, and 2010. Point, area, mobile, biogenic, VOC, and NO_x emission totals were estimated. The inventory summarized totals for each emissions category and reported emissions by source type. VOC emissions for the entire KCMA were estimated at 322,557 and 286,279 kilograms per summer day in 1990 and 1992, respectively. The present SIP

revisions are based on the inventory as revised in 1995.

B. Control Measures

The state has provided estimates of the achievable emissions reductions for only two of the many measures (7.2 RVP gasoline and RFG) included in the SIP. These estimates were evaluated to determine whether they are substantially equivalent to the reductions for which the 1992 SIP provides. In accord with the original maintenance plan, implementation of a regulation requiring Stage II vapor recovery systems at retail gasoline stations would result in daily VOC emissions reductions of 6.9 tons per day. An additional 1.5 tons per day of VOC reductions would be achieved through implementation of transportation control measures, making the 1992 SIP designed to reduce VOC emissions by a minimum of 8.4 tons per day. Accordingly, Kansas must demonstrate the substitute control measures will provide for areawide VOC reductions of at least 8.4 tons per day.

1. Gasoline Volatility Control

Typically reported as RVP, volatility is a measure of the tendency of gasoline to evaporate. RVP, expressed in psi, denotes the pressure exerted by a vapor at 100°F. The evaporation of gasoline adds to the quantity of VOCs in the atmosphere which contribute to ozone formation.

As a result of the ozone violation in 1995, Kansas promulgated a rule to limit the summertime RVP of gasoline sold in the Kansas portion of the KCMA to 7.2 psi (K.A.R. 28-19-79). This regulation became effective May 2, 1997. The EPA published final approval of Kansas' RVP rule on July 7, 1997 (**Federal Register** Vol. 62, No. 129, 36212). The approval became effective on August 6, 1997.

Emissions estimates for on-road mobile sources were developed using the EPA MOBILE5a model. Evaporative emissions from off-road mobile sources were estimated to decrease by 2.7 percent, assuming 90 percent of the off-road emissions are combustible and 10 percent are evaporative. Kansas has demonstrated that limiting the volatility of gasoline to 7.2 pounds psi will reduce VOC emissions by 4.0 tons per day within the KCMA.

2. RFG

RFG is a blend of gasoline containing oxygenates and lower levels of toxic substances. It is designed to reduce emissions of pollutants, including VOC from motor vehicle exhaust. RFG contains many of the same ingredients found in conventional gasoline, but in

different quantities. The addition of oxygenates, such as ethanol or methyl tertiary butyl ether, increases its oxygen content and thereby increases the combustion efficiency of the vehicle. The evaporative emissions can also be reduced depending on the RVP of the base gasoline to which the oxygenates are added.

The RVP requirement for RFG in Kansas, as defined in 40 CFR 80.71(a), is 7.2 psi. Emission reductions from RFG were modeled using the EPA's MOBILE5a emissions model and estimates of the number of vehicle miles traveled in the KCMA. Emissions are projected to be 96.65 tons per day in 2000. After implementation of 7.2 RVP, the emissions in 2000 are projected to be reduced to 89.22 tons per day. If RFG were to be implemented in 2000, emissions are projected to be reduced to 74.88, for an estimated incremental reduction of 14.34 tons per day.

As part of this proposed SIP revision, the KDHE commits to include RFG as a control measure in its year 2000 transitional plan as required to demonstrate compliance with the revised ozone NAAQS. The intent is to have the RFG control measure in place prior to the beginning of the 2001 ozone season. Kansas cited a preference for a 2001 implementation schedule because it is consistent with the AQF recommendations and the year 2000 transitional SIP planning process, and it provides reasonable opportunity for fuel refiners nearest the KCMA to complete the necessary capital improvements to compete for the newly created market for RFG. Previously, Kansas was prohibited from implementing RFG because the EPA had not promulgated the final regulation, making it possible for former nonattainment areas to participate in the Federal RFG program. However, this obstacle has been lifted by the EPA's rulemaking signed by the Administrator September 21, 1998, and published in the **Federal Register** on September 29, 1998 (63 FR 52093). Therefore, the EPA expects that the Governor of Kansas will request that the KCMA be included in the Federal RFG program. Upon fulfillment of this commitment, the EPA will propose to fully approve this revision to the maintenance SIP.

If the state does not opt in to the RFG program or adopt an equivalent state fuel program, the state must, by the deadline established in the final conditional approval, implement the contingency measures identified in the 1992 SIP. In this event, the state must adopt and submit any necessary regulations to implement the 1992 SIP contingency measures. If the state fails

to make a submittal by the deadline specified in the final conditional approval, the conditional approval converts to a disapproval.

3. Clean Fuel Fleets

Clean fuel fleets programs take advantage of vehicles relying on cleaner burning energy sources for fuel. These vehicles may operate on an array of fuels including electricity, compressed natural gas, propane, and ethanol blended gasolines. Because this program is voluntary, Kansas is not seeking and the EPA is not approving credit for emissions reductions under the maintenance plan.

4. Seasonal Low-fare Transit

The AQF and the MARC board recommended the area's transit providers provide no-fare transit during peak ozone season beginning in 1997. The Kansas City Area Transportation Authority requested the AQF endorse a reduced-fare program, commencing in 1998. Participation in this program is voluntary and difficult to estimate, and no permanent funding source has been identified. Therefore, Kansas is not seeking and the EPA is not approving credit for emission reductions for this program under this maintenance plan.

5. Additional Supplemental Measures

The EPA supports Kansas' commitment to implement various additional programs aimed at reducing VOC and NO_x emissions. Implementation of these programs will assist the KCMA in meeting both the 1-hour and 8-hour ozone standards. Kansas is not claiming and the EPA is not approving emissions reductions from these programs for purposes of the SIP. These measures include enhanced traffic signalization, a potentially expanded transit system, enhanced land-use planning, stationary source emissions controls, expanded public education programs, and air quality data collection.

C. Air Monitoring Network

The ambient air monitoring network which measures ozone concentrations in the KCMA consists of six monitoring stations. Five are located in Missouri at Liberty, Watkins Mill, Worlds of Fun, Kansas City International Airport (KCI), and Richards Gebaur Airport. The remaining monitoring station is located in Kansas City, Kansas. Liberty and Watkins Mill are downwind, assuming predominant winds are from the southwest. Two monitors, Worlds of Fun and KCI, are placed in populated areas. Richards Gebaur is considered an upwind site, designed to monitor ozone

transport from outside the area. The final monitor is located in downtown Kansas City, Kansas, in Wyandotte County.

Ozone concentrations may not exceed the 1-hour standard more than an average of once per year at any single monitoring site over any given three-year period. Eighteen (18) exceedances of the ozone standard have been recorded in the KCMA from 1990 through 1998. Nine of these exceedances occurred in 1995, with three each at the Liberty and Watkins Mill sites, two at Worlds of Fun site, and one at the KCI site. Four exceedances recorded at the Liberty monitor constituted the violation triggering the implementation of the previously approved contingency plan.

D. Maintenance of the Standard

By virtue of the approval of the 1992 maintenance SIP, the Administrator deemed the VOC reductions for which the contingency measures provided, necessary to promptly correct any violation of the 1-hour ozone standard which might occur subsequent to redesignation. Hence, the revised contingency measures must provide for the equivalent level of reductions. The Agency has determined that if Kansas meets the conditions set forth in this action, the revised plan will achieve the required reductions. The state has provided VOC emissions projections for the ten-year period following maintenance plan development. In addition, the state has committed to regularly updating the emissions inventory for the KCMA to ensure that emissions trends are appropriately tracked to facilitate future air quality planning activities.

E. Contingency Plan

The revised maintenance plan includes additional control measures to replenish the contingency measures that are being implemented in response to the 1995 violation of the standard. These measures are to be implemented in the event that additional violations are recorded. The KDHE is committed to reducing combined Johnson County and Wyandotte County VOC emissions by 5 percent in response to a future violation of the 1-hour ozone standard.

In implementing this 5 percent reduction, the KDHE will review the latest emission inventory data, perform a comprehensive evaluation of available control strategies, and select those control measures that provide the greatest air quality benefits and most cost-effective response. The options to be considered for this shall include, but not be limited to the following:

stationary source controls (NO_x and/or VOC), Stage II vapor recovery, and enhanced vehicle emissions reductions programs. These options will be considered in the order listed, as necessary to fulfill the 5 percent reduction obligation. If further violations of the 1-hour ozone standard occur, the KDHE will again review the data and evaluate additional control strategies.

F. Additional Reasonably Available Control Technology (RACT) Regulations

As a submarginal nonattainment area, the KCMA was required to implement RACT controls under section 182(a)(2)(A) of the CAA. The states of Missouri and Kansas implemented these regulations prior to the redesignation of the area. The KDHE implemented RACT on all major sources that were covered by control technique guideline (CTG) categories I, II, and III. In addition, the KDHE implemented non-CTG RACT on three source categories.

Kansas is currently developing a RACT rule to regulate the bakery source category in the area. Presently only one source is known to exist in the Kansas portion of the KCMA to require adoption of this RACT regulation. In response to the 1995 ozone standard violation, Kansas also initiated a source study to identify any additional facilities or categories requiring the adoption of additional specific RACT rules.

IV. Policy Review

Because Kansas City has recorded a violation of the 1-hour ozone standard in 1995, and recent air quality analyses performed by Kansas suggest Kansas City is likely to violate the new 8-hour standard, Kansas must proceed to expeditiously implement the provisions of the maintenance plan measures which are the subject of today's action. Protecting the 1-hour ozone standard becomes increasingly important in light of new requirements being established to implement the revised 8-hour ozone standard, which was finalized July 16, 1997. For this new standard, the EPA will establish a special "transitional" classification for areas that participate in a regional strategy or that opt to submit early plans addressing the 8-hour standard. The transitional classification will be available only to those areas meeting certain criteria, including having air quality data meeting the 1-hour standard by 2000. These transitional areas will be subject to less restrictive new source review and transportation conformity requirements than other ozone nonattainment areas. These less restrictive requirements are

important to companies seeking to expand existing operations or start new operations. Therefore, achieving the reductions associated with the maintenance plan proposed for approval today have critical implications for the ability of the KCMA to meet the requirements of the new 8-hour ozone standard. However, the control measures which would be conditionally approved are required to be implemented first and foremost to protect the 1-hour ozone standard.

Based on air quality data from 1996 through 1998 (after the violation which triggered the contingency measures in the 1992 maintenance plan), the Kansas City area may be able to demonstrate that it has now achieved the 1-hour ozone standard. However, the EPA's "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM₁₀ NAAQS" states that, in general, contingency measures which were triggered prior to revocation of the 1-hour standard must be retained. Therefore, although the EPA believes that the 1996 through 1998 data justify the brief delay in implementation of the substitute contingency measures, it does not relieve the states of the need to implement RFG, an equivalent state fuel, or one of the contingency measures identified in the 1992 SIP.

V. Conclusion

The EPA is soliciting public comments on this notice and on issues relative to the EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

VI. Proposed Action

In today's notice, the EPA proposes to conditionally approve Kansas' 1998 revisions to the Kansas City ozone maintenance plan. This includes the VOC control measures described above, the associated emissions reductions, and the commitment to implement the additional reductions as expeditiously as practicable. Full approval of the SIP is conditioned upon receipt of one of the following: (1) a request from the Governor of Kansas to require the sale of Federal RFG within the Kansas portion of the KCMA; (2) adopted regulations implementing the contingency measures identified in the 1992 maintenance plan, i.e., Stage II vapor recovery or an enhanced I/M program; or (3) adopted regulations to implement a state fuel program which will achieve reductions equivalent to a Federal RFG program. In the case of options 2 or 3, upon receipt of

regulations implementing these provisions and a request to amend the maintenance plan accordingly, the EPA will initiate rulemaking on this subsequent revision. If the state fails to submit one of the above, the conditional approval converts to a disapproval. The EPA proposes to establish a deadline for meeting the condition which is one year from the effective date of the final rule conditionally approving the state's 1998 submittal. The statute requires that the condition be met within one year of the conditional approval. The EPA seeks comments on whether a shorter deadline should be established.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposal would not create a mandate on state, local, or tribal governments. It would merely approve actions which the state has already chosen to take. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that the EPA has reason to believe may have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, the EPA may not issue a regulation that is not required by statute, that significantly 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, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the 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, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility

analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state has already chosen to impose. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action would approve requirements which the state has chosen to undertake under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, would result from this action. This

action would not result in annualized costs of 100 million dollars or more.

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

Dated: January 15, 1999.

Dennis Grams, P.E.,

Regional Administrator, Region VII.

[FR Doc. 99–1760 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6225–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Kansas City ozone maintenance area experienced a violation of the National Ambient Air Quality Standard (NAAQS) for ozone in 1995. In response to this violation, Missouri submitted revisions to its ozone maintenance plan. These revisions pertain to the implementation of control strategies to achieve reductions in volatile organic compound (VOC) emissions within the Missouri portion of the Kansas City ozone maintenance area. A major purpose of these revisions is to provide a more flexible approach to maintenance of acceptable air quality levels in Kansas City, while achieving emission reductions equivalent to those required by the previously approved plan.

The EPA is proposing to conditionally approve the 1998 revisions to the Kansas City ozone maintenance plan as a revision to the Missouri State Implementation Plan (SIP). Final approval is contingent upon Missouri's submission of additional, enforceable control measures.

In a separate **Federal Register** notice published today, the EPA is also proposing conditional approval of a similar plan submitted by the Kansas Department of Health and Environment to address the Kansas portions of the ozone maintenance area.

DATES: Comments on this proposed rule must be received in writing on or before February 25, 1999.

ADDRESSES: Comments may be mailed to Royan Teter, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document are

available for public review at the above address.

FOR FURTHER INFORMATION CONTACT: Royan Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas City metropolitan area (KCMA), consisting of Clay, Platte, and Jackson Counties in Missouri and Johnson and Wyandotte Counties in Kansas, was designated nonattainment for ozone in 1978. The Clean Air Act (CAA) provides for areas with a prescribed amount of air quality data showing attainment of the standard to be redesignated from nonattainment to attainment, if the requirements of section 107(d)(3)(E) are met. One of these requirements is for the area to adopt a maintenance plan consistent with the requirements of section 175A. This plan must demonstrate attainment of the NAAQS with a margin of safety sufficient to remain in attainment for ten years. Also, the plan must contain a contingency plan to be implemented if the area once again violates the standard.

Ozone monitoring data from 1987 through 1991 demonstrated that the Kansas City nonattainment area had attained the ozone NAAQS. In accordance with the CAA, the Missouri Department of Natural Resources (MDNR) revised the ozone SIP for the Missouri portion of the Kansas City area to recognize the area's attainment status. The EPA published final approval of the Missouri SIP on June 23, 1992. The SIP became effective on July 23, 1992 (57 FR 27939). This action effected the redesignation of the area to attainment.

The contingency plan approved as part of the 1992 SIP identified four measures which were to be implemented upon subsequent violation of the standard in the Kansas City area. These contingency measures required: (1) Certain new or expanding sources of ozone precursors to acquire emissions offsets; (2) the installation of Stage II vapor recovery systems at retail gasoline stations or the implementation of an enhanced inspection and maintenance (I/M) program for motor vehicles; (3) the implementation of transportation control measures achieving a 0.5 percent reduction in areawide VOC emissions; and (4) the completion of a comprehensive emissions inventory.

In a letter from Dennis Grams, EPA Region VII Administrator, to David Shorr, MDNR Director, on January 31, 1996, the EPA informed the MDNR of a violation of the ozone NAAQS. Quality-assured air quality monitoring data indicated measured exceedances of the

ozone standard on July 11, 12, and 13, 1995, at the Liberty monitoring site in Kansas City. The highest recorded value for each day was 0.128 ppm, 0.161 ppm, and 0.131 ppm, respectively. These exceedances, in combination with the measured exceedance of 0.128 ppm recorded on July 29, 1993, constitute a violation of the standard.

As a result of this violation, Missouri was required to implement the contingency measures identified in the approved SIP. In a July 28, 1995, letter from Roger Randolph (Air Pollution Control Program Director), to William Spratlin (Air, RCRA, and Toxics Division Director), Missouri requested guidance on responding to the KCMA ozone violation. Specifically, Missouri requested flexibility in utilizing control measures other than those identified in the approved SIP. Via an August 17, 1995, letter from William Spratlin to Roger Randolph, the EPA affirmed that Missouri and Kansas may substitute other contingency measures for those in the approved SIP, provided: (1) The substitute measures would achieve substantially equivalent emission reductions; (2) the substitute measures were submitted as a SIP revision; and (3) the substitute measures were implemented before the 1996 ozone season. It must be emphasized that this flexibility was extended to both Kansas and Missouri.

To address the short-term need to control emissions, Missouri promulgated an emergency rule to limit the summertime Reid Vapor Pressure (RVP) of gasoline sold within the KCMA to 7.2 pounds per square inch (psi) (10 CSR 10–2.330). The emergency rule was to expire on October 27, 1997. Prior to its expiration, the state promulgated a permanent regulation. The permanent rule was published in the Code of State Regulations (CSR) on September 30, 1997, and became effective October 30. On October 9, 1997, the EPA published a rule, which conditionally approved the state emergency rule upon receipt of an equivalent, adopted permanent rule. The state fulfilled the requirements of the conditional approval by submitting a permanent Missouri rule on November 13, 1997. The EPA published full approval of Missouri's permanent RVP rule on April 24, 1998 (**Federal Register**, Vol. 63, No. 79, 20318). The approval became effective on May 24, 1998.

To address the longer-term need to reduce VOC and nitrogen oxides (NO_x) emissions, the Mid-America Regional Council's Air Quality Forum (MARC AQF), comprised of representatives from local governments, business, health, and environmental organizations, agreed to examine

various alternative control strategies and recommend a suite of viable measures to Missouri and Kansas. The AQF recommended: (1) Expanding public education efforts; (2) low RVP gasoline; (3) motor vehicle I/M; (4) seasonal no-fare public transit; (5) a voluntary clean fuel fleets program; and (6) additional transportation control measures. The AQF also recommended a group of supplemental measures aimed at reducing ozone levels. The emissions reductions associated with the voluntary measures, specifically clean fuel fleets and transportation control, cannot be quantified due to their voluntary nature.

The MDNR presented a maintenance SIP, with the AQF recommendations, to the Missouri Air Conservation Commission (MACC) on June 24, 1997. At that time, the MACC recommended inclusion of a more timely and less politically sensitive control measure in place of the I/M provision. As a result, on October 7, 1997, the AQF recommended the implementation of a reformulated gasoline (RFG) program in the KCMA. In response, Missouri has committed to pursuing, among other options, petitioning the EPA to require the sale of RFG in the KCMA under the provisions of the Federal RFG program.

The final state submittal provides for continued monitoring, emissions inventory updates, a summertime RVP limit, and several programs for which emissions reductions cannot be quantified, including completion of a stationary source study, voluntary clean fuel fleets, seasonal low-fare transit, air quality conscious land use planning, and bicycle and pedestrian friendly transportation planning. In addition, the revised plan contains commitments to adopt either the Federal RFG Program, a state fuel regulation, or a Stage II regulation.

If violations continued to occur after implementation of the above measures, the state will adopt further regulations as necessary, selected from a list including, but not limited to, Stage II vapor recovery, enhanced I/M, emissions offsets from new or modified sources, and mandatory clean fuel fleets.

According to state estimates, limiting the summertime RVP of gasoline to 7.2 psi achieves VOC emissions reductions of only 4.0 tons per day. As such, additional reductions are necessary to provide for reductions substantially equivalent to those (8.4 tons per day) obtainable by implementing the contingency measures in the previously approved SIP. The implementation of an RFG program is therefore critical to

meeting Missouri's obligation to achieve the necessary reductions.

II. Evaluation Criteria

To evaluate the maintenance plan, the EPA referred to requirements of section 175A of the Act. The EPA also issued guidance specifically to address applicable procedures for handling redesignation requests, including maintenance plan provisions "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, to EPA Regional Division Directors, dated September 4, 1992. In addition, the EPA reviewed the maintenance plan for evidence that the substitute control measures provide for emissions reductions which are substantially equivalent to those approved in the 1992 SIP, pursuant to guidance given in the August 17, 1995, letter, from William Spratlin to Roger Randolph. Finally, the EPA evaluated the revised maintenance with respect to the "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM₁₀ NAAQS" from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators.

III. Review of Submittal

According to the September 4, 1992, memo from John Calcagni regarding "Procedures for Processing Requests to Redesignate Areas to Attainment," a maintenance plan must provide for maintenance of the ozone NAAQS for at least ten years after redesignation. Section 175A of the CAA defines the general framework of a maintenance plan. The Calcagni memo identifies the following list of core provisions necessary to ensure maintenance of the ozone NAAQS: emission inventory, maintenance demonstration (including control measures), air monitoring network, verification of continued attainment, and a contingency plan. Below is a discussion of each of these provisions, as addressed in the 1998 revision to the Kansas City SIP for control of ozone.

A. Emissions Inventory

The emissions inventory for the KCMA was revised in 1995. In a direct final rule (61 FR 18251), published on April 25, 1996, the EPA approved the revised emissions inventory. The emissions inventory estimated VOC and NO_x actual emissions for 1990 and 1992 while using industrial growth factors to project VOC and NO_x emissions for 1995, 2000, 2005, and 2010. Point, area, mobile, biogenic VOC, and NO_x emission totals were estimated. The

inventory summarized totals for each emissions category and reported emissions by source type. VOC emissions for the entire KCMA were estimated at 322,557 and 286,279 kilograms per summer day in 1990 and 1992, respectively. The present SIP revisions are based on the inventory as revised in 1995.

B. Control Measures

The state has provided estimates of the achievable emissions reductions for only two of the many measures (7.2 RVP gasoline and RFG) included in the SIP. These estimates were evaluated to determine whether they are substantially equivalent to the reductions for which the 1992 SIP provides. In accord with the original maintenance plan, implementation of a regulation requiring Stage II vapor recovery systems at retail gasoline stations would result in daily VOC emissions reductions of 6.9 tons per day. An additional 1.5 tons per day of VOC reductions would be achieved through implementation of transportation control measures, making the 1992 SIP designed to reduce VOC emissions of by a minimum of 8.4 tons per day. Accordingly, Missouri must demonstrate the substitute control measures will provide for areawide VOC reductions of at least 8.4 tons per day.

1. Gasoline Volatility Control

Typically reported as RVP, volatility is a measure of the tendency of gasoline to evaporate. RVP, expressed in psi, denotes the pressure exerted by a vapor at 100°F. The evaporation of gasoline adds to the quantity of VOCs in the atmosphere contributing to ozone formation.

As a result of the ozone violation in 1995, Missouri developed an emergency regulation for the Missouri portion of the KCMA to limit the summertime RVP of gasoline to 7.2 psi. This regulation became effective May 1, 1997, and expired at midnight on October 27, 1997. In the meantime, the state worked to develop a permanent regulation limiting summertime RVP of gasoline to 7.2 psi. This regulation was presented at public hearing at the May 29, 1997, MACC meeting. The MACC adopted the regulation at the same meeting. The final order of rulemaking was published in the September 3, 1997, Missouri Register. The final permanent rule was published in the CSR on September 30, 1997, and became effective October 30, 1997. On October 9, 1997, the EPA published a conditional final rule, which was contingent upon Missouri submitting the final permanent rule by November 30, 1997. Missouri submitted the

permanent rule on November 13, 1997. Therefore, the EPA published final approval of the 7.2 psi RVP rule on April 24, 1998 (63 FR 20318). The rule became effective on May 26, 1998.

Emissions estimates for on-road mobile sources were developed using the EPA MOBILE5a model. Evaporative emissions from off-road mobile sources were estimated to decrease by 2.7 percent, assuming 90 percent of the off-road emissions are combustive and 10 percent are evaporative. Missouri has demonstrated that limiting the volatility of gasoline to 7.2 psi will reduce VOC emissions by 4.0 tons per day within the KCMA.

2. RFG

RFG is a blend of gasoline containing oxygenates and lower levels of toxic substances. It is designed to reduce emissions of pollutants, including VOC from motor vehicle exhaust. RFG contains many of the same ingredients found in conventional gasoline, but in different quantities. The addition of oxygenates, such as ethanol or methyl tertiary butyl ether, increases its oxygen content, and thereby increases the combustion efficiency of the vehicle. The evaporative emissions can also be reduced depending on the RVP of the base gasoline to which the oxygenates are added.

The RVP requirement for RFG in Missouri, as defined in 40 CFR 80.71(a), is 7.2 psi. Emission reductions from RFG were modeled using the EPA MOBILE 5a. The MDNR modeled emission reductions from on-road mobile source emissions. Projected emissions are estimated to be 96.65 tons per day in 2000. After implementation of 7.2 RVP, the emissions in 2000 are projected to be reduced to 89.22 tons per day. If RFG were to be implemented in 2000, emissions are projected to be reduced to 74.88, for an estimated incremental reduction of 14.34 tons per day.

As part of this proposed SIP revision, the MDNR commits to requesting that the Governor of Missouri petition the EPA to include the KCMA in the Federal RFG Program as of April 15, 2000. Previously, Missouri was prohibited from implementing RFG because the EPA had not promulgated the final regulation, making it possible for former nonattainment areas to participate in the Federal RFG program. However, this obstacle has been lifted by the EPA's rulemaking signed by the Administrator September 21, 1998, and published in the **Federal Register** on September 29, 1998 (63 FR 52093). Therefore, the EPA expects that the Governor of Missouri will request that

the KCMA be included in the Federal RFG program. Upon fulfillment of this commitment, the EPA will propose to fully approve this SIP.

If the state does not opt in to the RFG program, the state must, by the deadline established in the final conditional approval, implement one of the two proposed alternatives (either a state fuel or Stage II vapor recovery). In this case, the state must adopt and submit any necessary regulations to implement either of the proposed alternatives. The EPA will initiate a rulemaking on this subsequent revision. If the state fails to make such a submittal by the deadline specified in the final conditional approval, the conditional approval converts to a disapproval.

3. Clean Fuel Fleets

Clean fuel fleets programs take advantage of vehicles relying on cleaner burning energy sources for fuel. These vehicles may operate on an array of fuels including electricity, compressed natural gas, propane, and ethanol blended gasolines. Because this program is voluntary, Missouri is not seeking and the EPA is not approving credit for emissions reductions under the maintenance plan.

4. Seasonal Low-fare Transit

The AQF and the MARC board recommended the area's transit providers provide no-fare transit during peak ozone season beginning in 1997 to encourage people to choose public transportation over the use of personal motor vehicles. The Kansas City Area Transportation Authority requested the AQF endorse a reduced-fare program, commencing in 1998. Participation in this program is voluntary and difficult to estimate, and no permanent funding source has been identified. Therefore, Missouri is not seeking and the EPA is not approving credit for emission reductions for this program under this maintenance plan.

5. Stage II Vapor Recovery

Stage II vapor recovery systems are used to control emissions of VOC containing gasoline vapors which are displaced during motor vehicle refueling. The vapors are captured using specially equipped nozzles and are routed back to the underground storage tank from which the gasoline is being pumped. Emissions estimates were calculated based on output from the EPA's MOBILE5a emissions model. If Stage II vapor recovery systems were required in the KCMA, VOC emissions from refueling could be reduced by 6.1 tons per day during the first year of use. The need for such systems is expected

to decrease over the long term, given there is a Federal requirement that all light duty vehicles and trucks be equipped with on-board vapor recovery systems beginning with model years 1998 and 2001, respectively; however, Stage II systems will remain an effective control measure for several years given that on-board systems will be phased in over nine years, and it will be several years before older, unequipped vehicles will be retired.

6. Additional Supplemental Measures

The EPA supports Missouri's commitment to implement various additional programs aimed at reducing VOC and NO_x emissions. Implementation of these programs will assist the KCMA in meeting both the 1-hour and 8-hour ozone standards. Missouri is not claiming and the EPA is not approving emissions reductions from these programs for purposes of the SIP. These measures include enhanced traffic signalization, a potentially expanded transit system, enhanced land-use planning, stationary source emissions controls, expanded public education programs, and air quality data collection.

C. Air Monitoring Network

The ambient air monitoring network which measures ozone concentrations in the KCMA consists of six monitoring stations. Five are located in Missouri at Liberty, Watkins Mill, Worlds of Fun, Kansas City International Airport (KCI), and Richards Gebaur Airport. The remaining monitoring station is located in Kansas City, Kansas. Liberty and Watkins Mill are downwind, assuming predominant winds are from the southwest. Two monitors, Worlds of Fun and KCI, are placed in populated areas. Richards Gebaur is considered an upwind site, designed to monitor ozone transport from outside the area. The final monitor is located in downtown Kansas City, Kansas, in Wyandotte County.

Ozone concentrations may not exceed the 1-hour standard more than an average of once per year at any single monitoring site over any given three-year period. Eighteen exceedances of the ozone standard have been recorded in the KCMA from 1990 through 1998. Nine of these exceedances occurred in 1995, with three each at the Liberty and Watkins Mill sites, two at Worlds of Fun site, and one at the KCI site. Four exceedances recorded at the Liberty site constituted the violation triggering the implementation of the previously approved plan.

D. Maintenance of the Standard

By virtue of the approval of the 1992 maintenance SIP, the Administrator deemed the VOC reductions, for which the contingency measures provided, necessary to promptly correct any violation of the 1-hour ozone standard which might occur subsequent to redesignation of the area from nonattainment to attainment. Hence, the revised contingency measures must provide for the equivalent level of reductions. The Agency has determined that if Missouri meets the conditions set forth in this action, the revised plan will achieve the required reductions. The state has provided VOC emissions projections for the ten-year period following maintenance plan development. In addition, the state has committed to regularly updating the emissions inventory for the KCMA to ensure that emissions trends are appropriately tracked to facilitate future air quality planning activities.

E. Contingency Plan

The revised maintenance plan includes additional control measures to replenish the contingency measures that are being implemented in response to the 1995 violation of the standard. These measures are to be implemented in the event that additional violations are recorded. The MDNR is committed to implement, in the order listed, the following measures upon violation of the 1-hour ozone standard: (1) Stage II vapor recovery, (2) enhanced I/M (I/M 240), (3) emission offsets, and (4) mandatory clean fuel fleets. The implementation of these control measures is dependent on obtaining administrative and legislative approval.

F. Additional Reasonably Available Control Technology (RACT) Regulations

Because the KCMA was classified as a submarginal nonattainment area, Missouri was required to implement RACT controls under section 182(a)(2)(A) of the CAA. The states of Missouri and Kansas implemented these regulations prior to the redesignation of the area. The MDNR implemented RACT on all major sources that were covered by control technique guideline (CTG) categories I, II, and III. In addition, the Department implemented non-CTG RACT on sources greater than 100 tons of VOC emissions per year.

The MDNR conducted a stationary source study to determine sources that could further be controlled through RACT regulations. Based on this study, the MDNR recommends five VOC regulations to pursue: solvent cleaning, soybean oil extraction, aerospace

surface coating, upgraded offset lithography, and volatile organic liquid storage.

IV. Policy Review

Because Kansas City has recorded a violation of the 1-hour ozone standard in 1995, and recent air quality analyses performed by Missouri suggest Kansas City is likely to violate the new 8-hour standard, Missouri must proceed to expeditiously implement the provisions of the maintenance plan which are the subject of today's action. Protecting the 1-hour ozone standard becomes increasingly important in light of new requirements being established to implement the revised 8-hour ozone standard, which was finalized July 16, 1997. For this new standard, the EPA will establish a special "transitional" classification for areas that participate in a regional strategy or that opt to submit early plans addressing the 8-hour standard. The transitional classification will be available only to those areas meeting certain criteria, including having air quality data meeting the 1-hour standard by 2000. These transitional areas will be subject to less restrictive new source review and transportation conformity requirements than other nonattainment areas. These less restrictive requirements are important to companies seeking to expand existing operations or start new operations. Therefore, achieving the reductions associated with the maintenance plan proposed for approval today has critical implications for the ability of the KCMA to meet the requirements of the new 8-hour ozone standard. However, the control measures which would be conditionally approved are required to be implemented first and foremost to protect the 1-hour ozone standard.

Based on air quality data from 1996 through 1998 (after the violation which triggered the contingency measures in the 1992 maintenance plan), the Kansas City area may be able to demonstrate that it has now achieved the 1-hour ozone standard. However, the EPA's "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM₁₀ NAAQS" states that, in general, contingency measures which were triggered prior to revocation of the 1-hour standard must be retained. Therefore, although the EPA believes that the 1996 through 1998 data justify the brief delay in implementation of the substitute contingency measures, it does not relieve the states of the need to implement RFG, or one of the alternatives identified in this notice.

V. Conclusion

The EPA is soliciting public comments on this notice and on issues relative to the EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

VI. Proposed Action

In today's notice, the EPA proposes to conditionally approve Missouri's 1998 revisions to the Kansas City SIP for control of ozone. This includes the VOC control measures described above, the emissions reduction credits identified by the state, and the commitment to implement the additional reductions as expeditiously as practicable.

Full approval of the SIP is conditioned upon receipt of one of the following: (1) A letter from the Governor of Missouri requesting that the EPA require the sale of Federal RFG within the Missouri portion of the KCMA beginning April 15, 2000; (2) an alternative state fuel regulation; or (3) a regulation requiring Stage II vapor recovery systems at retail gasoline stations. If the state fails to submit one of the above, the conditional approval converts to a disapproval. The EPA proposes to establish a deadline for meeting the condition which is one year from the effective date of the final rule conditionally approving the state's 1998 submittal. The statute requires that the condition be met within one year of the conditional approval. The EPA seeks comments on whether a shorter deadline should be established.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with

those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposal would not create a mandate on state, local, or tribal governments. It would merely approve actions which the state has already chosen to take. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that the EPA has reason to believe may have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, the EPA may not issue a regulation that is not required by statute, that significantly 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, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to the OMB, in a separately identified section of the

preamble to the rule, a description of the extent of the 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, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state has already chosen to impose. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal

governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action would approve requirements which the state has chosen to undertake under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, would result from this action. This action would not result in annualized costs of 100 million dollars or more.

List of Subjects in 50 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Volatile organic compounds.

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

Dated: January 15, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99-1761 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD080-3037; FRL-6224-2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision implements Maryland's portion of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) which describes a regional nitrogen oxides (NO_x) cap and trade program that will significantly reduce NO_x emissions generated within the Ozone Transport Region (OTR). The

intended effect of this action is to propose approval of Maryland's regulations entitled Post RACT Requirements for NO_x Sources and Policies and Procedures Relating to Maryland's NO_x Budget Program.

DATES: Written comments must be received on or before February 25, 1999.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814-2178, or by e-mail at fernandez.cristina@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address. **SUPPLEMENTARY INFORMATION:** On August 28, 1998, Maryland Department of the Environment submitted a revision to its State Implementation Plan (SIP). The revision consists of Code of Maryland Regulations (COMAR) 26.11.27.01-.14, Post RACT Requirements for NO_x Sources and COMAR 26.11.28.01-.13, Policies and Procedures Relating to Maryland's NO_x Budget Program.

I. Background

The OTC adopted a MOU on September 27, 1994, committing the signatory states to the development and proposal of a two phase region-wide reduction in nitrogen oxides (NO_x) emissions by 1999 and 2003, respectively. As reasonably available control technology (RACT) to reduce NO_x emissions was required to be implemented by May of 1995, the MOU refers to the NO_x reductions to be achieved by 1999 as Phase II; and the NO_x reductions to be achieved by 2003 as Phase III. The OTC states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia and the District of Columbia. All the OTC states, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU. The OTC MOU requires reductions in ozone season NO_x emissions from utility and large industrial combustion facilities within the OTR in order to further the

effort to achieve the health-based National Ambient Air Quality Standard (NAAQS) for ozone.

In the MOU, the OTC states agreed to propose regulations for the control of NO_x emissions in accordance with the following guidelines:

1. The level of NO_x required would be established from a 1990 baseline emissions level.
2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a region wide trading program.
3. The reduction would be determined based on the less stringent of each of the following:
 - a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_x emissions by 65% from baseline, or emit NO_x at a rate no greater than 0.20 pound per million Btu. (This is referred to as a Phase II requirement).
 - b. By May 1, 1999, the affected facilities in the outer zone shall reduce their rate of NO_x emissions by 55% from baseline, or shall emit NO_x at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase II requirement).
 - c. By May 1, 2003, the affected facilities in the inner and outer zone shall reduce their rate of NO_x emissions by 75% from baseline, or shall emit NO_x at a rate of no greater than 0.15 pounds per million Btu. (This is referred to as a Phase III requirement).
 - d. By May 1, 2003, the affected facilities in the Northern zone shall reduce their rate of NO_x emissions by 55% from baseline, or shall emit NO_x at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase III requirement).

A Task Force of representatives from the OTC states, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), were charged with the task of developing a model rule that would implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/ MARAMA NO_x Budget Task Force worked with EPA and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. The model rule was issued May 1, 1996. The model rule was developed for the OTC states to implement the Phase II reduction called for in the MOU to be achieved by May 1, 1999. The model rule does not include the implementation of Phase III.

II. Summary of SIP Revision

The regulations of COMAR 26.11.27.01–.14, Post RACT Requirements for NO_x Sources are based solely upon the “NESCAUM/MARAMA NO_x Budget Rule” issued in May 1, 1996. The model rule was developed by the states in the OTR using the EPA’s economic incentive rules (67 FR 16690) which were published on April 7, 1994, as the general regulatory framework.

The Maryland NO_x Budget Program establishes NO_x emission allowances for each NO_x control period beginning May 1, 1999 through the NO_x control period ending September 30, 2002. This program identifies the budgeted sources and identifies the number of allowances each budget source is allocated. Maryland’s NO_x Budget Program, includes the adoption of two new chapters: COMAR 26.11.27, Post RACT Requirements for NO_x Sources and COMAR 26.11.28, Policies and Procedures Relating to Maryland’s NO_x Budget Program.

COMAR 26.11.27, Post RACT Requirements for NO_x Sources (NO_x Budget Program) is divided in fourteen sections: (.01) Definitions; (.02) Incorporation by Reference; (.03) Applicability; (.04) General Requirements; (.05) Allowance Allocations; (.06) Identification of Authorized Account Representatives; (.07) Allowance Banking; (.08) Emission Monitoring; (.09) Reporting; (.10) Record Keeping; (.11) End-of-Season Reconciliation; (.12) Compliance Certification; (.13) Penalties; (.14) Audit.

COMAR 26.11.28, Policies and Procedures Relating to Maryland’s NO_x Budget Program is divided in thirteen sections: (.01) Scope; (.02) Definitions; (.03) Procedures Relating to Compliance Accounts; (.04) Procedures Relating to General Accounts; (.05) Allowance Banking; (.06) Allowance Transfer; (.07) Emissions Monitoring; (.08) Early Reduction Allowances; (.09) Opt-in Procedures; (.10) Audit Provisions; (.11) Allocations to Units in Operation in 1990; (.12) Allocations to Budget Sources Beginning Operation or for Which a Permit Was Issued After 1990 and Before January 1, 1998; (.13) Percent Contribution of Budget by Company.

Proposed Action

EPA is proposing to approve the Maryland SIP revision consisting of COMAR 26.11.27.01–.14, Post RACT Requirements for NO_x Sources and COMAR 26.11.28.01–.13, Policies and Procedures Relating to Maryland’s NO_x Budget Program, submitted on August 28, 1998. EPA is soliciting public

comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document. A more detailed description of the state submittal and EPA’s evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the ADDRESSES section of this document.

III. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled “Regulatory Planning and Review.”

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA’s prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments “to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.” Today’s rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is “economically significant,” as defined under Executive

Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 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 EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.” Today’s rule does not significantly or uniquely affect the 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and

small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action to propose approval of Maryland's NOx Budget Program to implement Phase II of the OTC MOU.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 19, 1999.

Thomas C. Valtaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–1757 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD079–3035; FRL–6218–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOCs From the Manufacture of Explosives and Propellant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision imposes reasonably available control technology (RACT) requirements for volatile organic compounds (VOCs) from sources that manufacture explosives and propellant. In the Final Rules section of this **Federal Register**, EPA is approving Maryland's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the technical support document is available at the address given below. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 25, 1999.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Section, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103;

Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth (215) 814–2183, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: December 30, 1998.

Thomas Valtaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–1763 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MO 043–1043(b); FRL–6219–9]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a redesignation request submitted by the state of Missouri on June 13, 1997. Additional material was submitted on June 15, 1998. In this submittal, Missouri submitted a maintenance plan and a request that a portion of St. Louis be redesignated to attainment of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide. In the final rules section of the **Federal Register**, the EPA is approving the state's State Implementation Plan (SIP) revision and request for redesignation as a direct final rule without a prior proposal, because the Agency views this as a noncontroversial revision and redesignation and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by February 25, 1999.

ADDRESSES: Comments may be mailed to Stanley Walker, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stanley Walker at (913) 551-7494.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: January 7, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99-1333 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067-AC96

National Flood Insurance Program (NFIP); Insurance Coverage and Rates

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We (FEMA) propose a rule that would increase the amount of premium you (the flood insurance policyholder) pay for flood insurance coverage for "pre-FIRM" buildings in coastal areas subject to high velocity waters, such as storm surges, and wind-driven waves ("V" zones). ("Pre-FIRM" buildings are those whose construction was started before January 1, 1975, or the effective date of a community's Flood Insurance Rate Map (FIRM), whichever is later. Pre-FIRM buildings and their contents are eligible for subsidized rates.) We propose this rate increase to bring the subsidized premiums that we currently charge for pre-FIRM, V-zone properties more in line with their actual risk.

DATES: Please send any comments received on or before February 25, 1999.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202-646-4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 202-646-3422, (facsimile) 202-646-4327, or (email) charles.plaxico@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Act of 1968, as amended, authorizes the sale of flood insurance under the National Flood Insurance Program (NFIP). The NFIP makes flood insurance available in communities that adopt and enforce floodplain management ordinances designed to reduce future flood damage. Until we can complete a detailed flood risk study that produces a FIRM for your community (or in some cases if we decide that such a study is not cost effective), your community participates in what we call the "emergency program." Only a limited amount of flood insurance is available in the emergency program. We refer to construction started before January 1, 1975, or the effective date of the FIRM, whichever is later, as "pre-FIRM" construction. The premium rates we charge you for flood insurance coverage on pre-FIRM buildings are less than full risk premiums. (Throughout this proposed rule, we use the terms "subsidized rates" and "chargeable rates" interchangeably to describe less than full-risk premiums under the NFIP.)

Statutory Mandates for Setting Flood Insurance Premiums

Pub. L. 93-234 requires us to charge *full-risk* premiums for flood insurance coverage on buildings when their construction began after December 31, 1974, or the effective date of FEMA's Flood Insurance Rate Map, if the second date is later. (We call such construction "post-FIRM" construction.)

Pub. L. 93-234 authorizes us to apply chargeable rates to pre-FIRM property and gives the Federal Insurance Administrator flexibility to set the flood insurance rates for pre-FIRM construction. This legislation calls for us to balance the need to offer reasonable rates that encourage people to buy flood insurance with the statutory goal to distribute burdens fairly between all who will be protected by flood insurance and the general public.

Proposed Change and Its Purposes

We are proposing to increase the subsidized rates we charge for the initial limits of coverage under the NFIP for pre-FIRM properties that are in "V" zones on FEMA's FIRMs. ("V" zones represent coastal areas subject to high velocity water such as wind-driven waves from storms or tidal surges that are extremely hazardous to people and property). Subsidized rates are the same currently for properties in V and A

zones). We are proposing this rate increase to distribute economic burdens more fairly among policyholders of the NFIP and the general body of taxpayers.

Need To Build Reserves for Future Catastrophic Losses

One of the goals of the NFIP is to shift the financial burden for flood disasters from the general body of taxpayers to those who live or own businesses at risk in the flood plains. The NFIP is doing that. Bringing our subsidized premiums as close to full risk premiums as our loss experience permits will work toward that goal and will reflect some of the variations in risk among properties eligible for subsidized premiums rates.

We currently use the same chargeable rates throughout the country for:

(1) buildings and contents in communities in the Emergency Program or initial phase of the NFIP, and

(2) certain structures in the Regular Program.

But the sum of the chargeable or subsidized premium and other administrative fees that you pay for flood coverage is less than our expenses and loss payments.

Recognition of Inherently Greater Risks

Until now, we have charged the same subsidized premium rate for flood insurance coverage in different risk zones of pre-FIRM property. Pre-FIRM properties in V zones are inherently greater risks than similar properties in A zones. This truth is born out by our loss experience. Our loss experience tells us that we must reflect in our chargeable rates the greater degree of hazard of a pre-FIRM property in a V-zone area than the hazard of a similar pre-FIRM property in an A-zone area.

Subsidized Rate Increases in the Past

We have increased the chargeable or subsidized premium rates three times during the program's history for the same reason that we are proposing this rule: to distribute burdens fairly among all who will be protected by flood insurance and among the general public. The changes proposed in this rule would move us closer toward that goal by bringing subsidized premiums more in line with the actual risk.

Comparison of Proposed Rate Increases With Current Rates

The following chart shows the existing subsidized rates for A-zone properties and the proposed increases for V-zone properties:

Type of structure	A zone rates ¹ per year per \$100 coverage on:		V zone rates ² per year per \$100 coverage on:	
	Structure	Contents	Structure	Contents
1. Residential				
No Basement or Enclosure	.68	.79	.82	.95
With Basement or Enclosure	.73	.79	.88	.95
2. All other including hotels and motels with normal occupancy of less than 6 months duration				
No Basement or Enclosure	.79	1.58	.95	1.90
With Basement or Enclosure	.84	1.58	1.01	1.90

¹ A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.

² V zones are zones V1–V30, VE, and unnumbered V zones.

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA is conducting an environmental assessment of this proposed rule. The assessment will be available for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The proposed rule has not been reviewed by the Office of

Management and Budget under E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we propose to amend 44 CFR Part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each \$100 of flood insurance coverage as follows for pre-FIRM A zone properties, pre-FIRM V zone properties, and emergency program properties.

Type of structure	A zone rates ¹ per year per \$100 coverage on:		V zone rates ² per year per \$100 coverage on:	
	Structure	Contents	Structure	Contents
1. Residential				
No Basement or Enclosure	.68	.79	.82	.95
With Basement or Enclosure	.73	.79	.88	.95
2. All other including hotels and motels with normal occupancy of less than 6 months duration				
No Basement or Enclosure	.79	1.58	.95	1.90
With Basement or Enclosure	.84	1.58	1.01	1.90

¹ A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.

² V zones are zones V1–V30, VE, and unnumbered V zones.

(b) We will charge rates for contents in pre-FIRM buildings according to the use of the building.

(c) A-zone rates for buildings without basements or enclosures apply uniformly to all buildings throughout emergency program communities.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"; No. 83.516, "Disaster Assistance")

Dated: January 18, 1999.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 99–1745 Filed 1–25–99; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC94

Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) grants the President the authority for declarations of major disasters and emergencies. We, FEMA, provide a recommendation to the President whether Federal disaster assistance is warranted. This proposed rule would establish the factors that we take into consideration when evaluating a Governor's request for a major disaster declaration under the Stafford Act. This proposed rule would not affect presidential discretion, nor would it change published regulations and policies established under the Stafford Act.

DATES: We invite your comments, which may be submitted on or before April 26, 1999.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202-646-4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Patricia Stahlschmidt, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202-646-4066, (facsimile) 202-646-4060, or (email) patricia.stahlschmidt@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

The Stafford Act requires that the Governor of the affected State submit requests for major disaster assistance to the President. The Governor's request must be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments. Our role is to evaluate the Governor's request and to make a recommendation to the President whether major disaster assistance is warranted. We take this role very seriously and evaluate each request on the basis of a number of factors. This process ensures that we evaluate requests fairly and consistently across all States while at the same time it permits us to look at the unique circumstances and needs of each request. In recent years the General Accounting Office, our Inspector General, Congress and some States and local governments have asked that we publish the criteria that we use to evaluate these requests.

Objectives

We agree that it is time to publish the factors used to evaluate major disaster

declarations and have adopted four objectives for these factors:

1. They must be easy to understand and administer;
2. They should encourage the State to establish its own funded disaster assistance programs;
3. They should provide incentives for hazard mitigation and insurance;
4. They should focus primarily on the Public Assistance Program.

Discussions with Others

We discussed declaration factors with the National Emergency Management Association and a number of other organizations in the development of these evaluation factors. There are differences of opinion whether disaster declaration criteria should be published and what they should be. Some States want this information so that they know when a major disaster declaration request is reasonable, and what size disaster the State should be expected to manage so that they can have a target level for their own trust funds or disaster assistance programs. Other States object to criteria, seeing criteria as a "one-size-fits-all" approach and merely a means to transfer costs to State and local governments. All individuals that we met with saw the need to preserve the President's discretion.

We believe that the factors outlined below:

- Preserve presidential discretion while at the same time they provide a threshold of damages under the Public Assistance Program that we can reasonably expect States and local governments to manage;
- Are not a mechanism for transferring costs to State and local governments, but in fact, essentially mirror the process that we now use to evaluate requests for major disaster declarations;
- Would allow us to evaluate the unique circumstances or needs created by each disaster while permitting us to apply all factors consistently to each State's request; and
- Provide an objective and clear measurement by including a per capita figure among the factors that we would evaluate. However, the per capita amount alone does not automatically mean a denial if the State does not meet it, nor does it guarantee a declaration if the State meets it.

In summary, the evaluation factors propose a simple, clear and reasonable means to measure the severity, magnitude and impact of a disaster, while at the same time ensure that the President can respond quickly and effectively to a Governor's request for assistance.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10. We have not prepared an environmental assessment.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 44 CFR Part 206 as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. We are adding section 206.48 to read as follows.

§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.

When we review a Governor's request for major disaster assistance under the Stafford Act, these are the primary factors in making a recommendation to the President whether assistance is warranted. We consider other relevant information as well.

(a) Public Assistance Program. We evaluate the following factors to evaluate the need for assistance under the Public Assistance Program.

(1) *Estimated Cost of the Assistance.* We evaluate the estimated cost of Federal and nonfederal public assistance against the statewide population to give some measure of the per capita impact within the State. We use a figure of \$1 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and adjust this figure annually based on the Consumer Price Index for all Urban Consumers. We are establishing a minimum threshold of \$1 million in public assistance damages per disaster in the belief that we can reasonably expect even the lowest population States to cover this level of public assistance damage.

(2) *Impact at the County Level.* We evaluate the impact of the disaster at the county level because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where the per capita impact at the county level might be extremely high. For example, we have at times seen localized damages in the tens or even hundreds of dollars per capita at the county level though the statewide per capita impact was low.

(3) *Insurance coverage in force.* We consider the amount of insurance coverage that is in force or should have been in force as required by law and

regulation at the time of the disaster, and reduce the amount of anticipated assistance by that amount.

(4) *Hazard mitigation.* To recognize and encourage mitigation, we consider the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation measures are likely to have reduced the damages from a particular disaster, we consider that in the evaluation of the request. This could be especially significant in those disasters where, because of mitigation, the estimated public assistance damages fell below the per capita indicator.

(5) *Recent multiple disasters.* We look at the disaster history within the last twelve-month period to evaluate better the overall impact on the State or locality. We consider declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) *Programs of other Federal assistance.* We also consider programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

(b) Factors for the Individual Assistance Program. We consider the following factors to measure the severity, magnitude and impact of the disaster and to evaluate the need for assistance to individuals under the Stafford Act.

(1) *Concentration of Damages.* We evaluate the concentrations of damages to individuals. High concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State.

(2) *Trauma.* We consider the degree of trauma to a State and to communities. Some of the conditions that might cause trauma are:

- (i) Large numbers of injuries and deaths;
- (ii) Large scale disruption of normal community functions and services; and
- (iii) Emergency needs such as extended or widespread loss of power or water.

(3) *Special Populations.* We consider whether special populations, such as low-income, the elderly, or the unemployed are affected, and whether they may have a greater need for assistance.

(4) *Voluntary Agency Assistance.* We consider the extent to which voluntary agencies and State or local programs can meet the needs of the disaster victims.

(5) *Insurance.* We consider the amount of insurance coverage because, by law, Federal disaster assistance cannot duplicate insurance coverage.

(6) *Average Amount of Individual Assistance by State.* There is *no set threshold* for recommending Individual Assistance, but the following averages may prove useful to States and voluntary agencies as they develop plans and programs to meet the needs of disaster victims.

AVERAGE AMOUNT OF ASSISTANCE PER DISASTER [July 1994 to August 1998]

	Small States (under 2 million pop.)	Medium States (2–10 million pop.)	Large States (over 10 million pop.)
Average Population (1990 census data)	1,045,452	4,888,599	15,556,781.
Number of Disaster Housing Applications Approved	1,375	2,434	5,517.
Number of Homes Estimated Major Damage/Destroyed	161	426	895.
Dollar Amount of Housing Assistance	\$2.6 million	\$4.3 million	\$10.4 million.
Number of Individual and Family Grant Applications Approved	437	1,222	2,966.
Dollar Amount of Individual and Family Grant Assistance	\$1.0 million	\$2.6 million	\$4.4 million.
Disaster Housing/IFG Combined Assistance	\$3.6 million	\$6.9 million	\$14.8 million.

(Note: The high 3 and low 3 disasters, based on Disaster Housing Applications, are not considered in the averages. Number of Damaged/Destroyed Homes is estimated based on the number of owner-occupants who qualify for Eligible Emergency Rental Resources. Data source is FEMA's National Processing Service Centers. Data are only available from July 1994 to the present.)

Small Size States (under 2 million population, listed in order of 1990 population): Wyoming, Alaska, Vermont, District of Columbia, North Dakota,

Delaware, South Dakota, Montana, Rhode Island, Idaho, Hawaii, New Hampshire, Nevada, Maine, New Mexico, Nebraska, Utah, West Virginia. U.S. Virgin Islands and all Pacific Island dependencies.

Medium Size States (2–10 million population, listed in order of 1990 population): Arkansas, Kansas, Mississippi, Iowa, Oregon, Oklahoma, Connecticut, Colorado, South Carolina, Arizona, Kentucky, Alabama, Louisiana, Minnesota, Maryland, Washington, Tennessee, Wisconsin, Missouri, Indiana, Massachusetts,

Virginia, Georgia, North Carolina, New Jersey, Michigan. Puerto Rico.

Large Size States (over 10 million population, listed in order of 1990 population): Ohio, Illinois, Pennsylvania, Florida, Texas, New York, California.

Dated: January 12, 1999.

James L. Witt,

Director.

[FR Doc. 99–1746 Filed 1–25–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73****[MM Docket No. 99-3; RM-9427]****Radio Broadcasting Services; Rozel, KS****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Dana Puopolo, proposing the allotment of Channel 273A to Rozel, Kansas, as that community's first local aural transmission service. Coordinates used for this proposal are 38-11-42 NL and 99-24-24 WL.

DATES: Comments must be filed on or before March 8, 1999, and reply comments on or before March 23, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dana J. Puopolo, 37 Martin Street, Rehoboth, MA 02769-2103.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-3, adopted December 30, 1998, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-1716 Filed 1-25-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73****[MM Docket No. 99-2; RM-9347]****Radio Broadcasting Services; Saltillo, MS****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Broadcasters & Publishers, Inc. requesting the allotment of Channel 275C3 to Saltillo, Mississippi, as that community's first local aural transmission service. Coordinates used for this proposal are 34-23-56 NL and 88-34-06 WL.

DATES: Comments must be filed on or before March 8, 1999, and reply comments on or before March 23, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Erwin G. Krasnow, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, 901 -15th Street, NW., Suite 700, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-2, adopted December 30, 1998, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99-1715 Filed 1-25-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Vermilion Darter as Endangered****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of 90-day petition finding and initiation of status review.

SUMMARY: We (U.S. Fish and Wildlife Service) are announcing a 90-day finding for a petition to list the vermilion darter (*Etheostoma chermocki*) under the Endangered Species Act of 1973, as amended. We find that the petition presents substantial information indicating that listing this species may be warranted. A status review is initiated.

DATES: The finding announced in this document was made on January 7, 1999. Send your comments and materials to reach us on or before March 29, 1999. We may not consider comments received after the above date in making our decision for the 12-month finding.

ADDRESSES: You may submit data, information, comments, or questions concerning this petition to the Field Supervisor, U.S. Fish and Wildlife Service, Jackson Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Drennen, Biologist, at the above address (telephone 601-965-4900, extension 27).

SUPPLEMENTARY INFORMATION:**Background**

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the petitioned action may be warranted. We base the finding on all the information available to us at the time the finding is made. To the maximum extent practicable, we make the finding within 90 days of receipt of the petition, and promptly publish the finding in the **Federal Register**. If we find that substantial information was presented, we must promptly commence a status review of the species.

The processing of this petition conforms with our current listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance gives highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this petition is a Tier 2 action.

We have made a 90-day finding on a petition to list the vermilion darter (*Etheostoma chermocki*) as endangered. Mr. Robert R. Reid, Jr. of Birmingham, Alabama, submitted the petition, dated July 22, 1998, which we received July 23, 1998. On August 18, 1998, we received supplemental information (dated August 12, 1998) on the species and a request from Dr. Paul D. Blanchard, of Samford University, in Birmingham, to be co-petitioner with Mr. Reid, at Mr. Reid's request.

The petition requested that we emergency list the vermilion darter as endangered. The petitioners stated that the vermilion darter merits listing because of its restricted range and threats to water quality, especially siltation. The petitioners requested

emergency listing due to the perceived immediate threats to the species' continued existence from the proposed construction of the Jefferson County jail, and expansion of the county land fill and sewage treatment plant near this species' habitat.

We have reviewed the petition, the literature cited in the petition, other literature, and information available in our files. Based on the best scientific information available, we find the petition presents substantial information that listing this species may be warranted. Emergency listing is allowed under the Act whenever immediate protection is needed to address a significant risk to the species' well being. Based on currently available information, emergency listing is not needed for the vermilion darter. The proposed jail, and expansion of the county land fill and sewage treatment plant are localized activities near the downstream extent of the species' range. We have determined that they do not pose an imminent threat of extinction to a significant portion of the total population.

The vermilion darter is found only in the Turkey Creek drainage, a tributary of the Locust Fork of the Black Warrior River, Jefferson County, Alabama (Boschung *et al.* 1992, Blanco *et al.* 1995, Mettee *et al.* 1996). Blanco *et al.* (1995) documented the vermilion darter's known range to 7.2 miles of the mainstem of Turkey Creek and the lowermost reaches of one tributary, Dry Creek. The historic population size of the vermilion darter is unknown and current population data is limited. There are localities with favorable concentrations of darters and others with few or none. In the 1960s and 70s, the vermilion darter was common at the Highway 79 bridge site but, by 1992, it had become very rare there (Boschung *et al.* 1992).

Habitat for the vermilion darter is similar to that for other snub-nosed darters typically found in small-sized clear streams with gravel riffles and moderate currents (Kuehne and Barbour 1983, Etinier and Starnes 1993). Boschung *et al.* (1992) described the streams as 3 to 20 meters (9.84 to 65.6 feet) wide, 0.01 to >0.5 meter (0.034 to >1.64 feet) in depth, with pools of moderate current alternating with riffles of moderately swift current. The riffles are of coarse gravel, cobble and small rubble, and the bottoms of the pools are rock, sand, and silt. The darter is absent from bedrock, but it does occur in bedrock-dominated areas with sand and gravel.

Impacts of point and non-point source pollution are the primary threats to the

survival of this species. The vermilion darter, being isolated and localized, is vulnerable to human-induced impacts to its habitat. Excessive sediments are believed to impact the habitat of darters and associated fish species by making it unsuitable for feeding and reproduction. Urbanization of the Turkey Creek watershed has likely contributed significantly to its sedimentation. The approximately 35 square mile Turkey Creek watershed drains 54,731 acres of Jefferson County, the most populous county in the state. A State highway divides the watershed and there is significant development (such as commercial, residential, and industrial) throughout the area. The creek has been noted to be brown-orange after heavy rains and completely muddy (Blanchard pers. comm. 1998). Implementation of the recently proposed Jefferson County jail would likely lead to increased sediment loading of the creek within the lower 2 miles of the known vermilion darter range (Boschung *et al.* 1992 and Blanco *et al.* 1995). Increased nutrient loading by sewage effluent has likely contributed to the eutrophication of the creek. Violations reported by Alabama Department of Environmental Management for the Turkey Creek Waste Water Plant (TCWWP) (Blanchard *in litt.* 1998) have shown elevated maximum values for fecal coliforms, while below the TCWWP, the creek has been altered by strip-mining and land fill.

We solicit information regarding occurrence and distribution of the species, threats to its continued existence, and any additional comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the vermilion darter. Of particular interest is information regarding:

- (1) Additional historic and current population data which may assist in determining range and long term population trends;
- (2) Pertinent information on biology and life history;
- (3) Additional information about habitat requirements and stream water quality; and,
- (4) Information on immediate and distant ecological threats to the vermilion darter, other fish species of the creek, and the watershed in general.

After consideration of additional information, submitted during the indicated time period (see **DATES** section), we will prepare a 12-month finding as to whether listing of the species is warranted.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Jackson Field Office. See **ADDRESSES** above.

Author.

The primary author of this document is Daniel J. Drennen (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 7, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99-1639 Filed 1-25-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF34

Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for the Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service, propose threatened status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Santa Ana sucker (*Catostomus santaanae*). The species is threatened by potential habitat destruction, natural and human-induced changes in streamflows, urban development and related land-use practices, intensive recreation, the introduction of non-native competitors and predators, and demographics associated with small populations. This proposed rule, if made final, would invoke the Federal protection and recovery provisions of the Act for this fish species within the Los Angeles, San Gabriel, and Santa Ana River drainages. **DATES:** We must receive comments from all interested parties by March 29, 1999. We must receive public hearing requests by March 12, 1999.

ADDRESSES: Send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul J. Barrett, biologist, U.S. Fish and Wildlife Service, at the above address (or telephone 760-431-9440; facsimile 760-431-9624).

SUPPLEMENTARY INFORMATION:

Background

The Santa Ana sucker (*Catostomus santaanae*) is a recognized full species and member of the sucker family (Catostomidae). The Santa Ana sucker was originally described as *Pantosteus santa-anae* by Snyder (1908, as in Moyle 1976). The genus *Pantosteus* was reduced to a subgenus of *Catostomus* and the hyphen omitted from the specific name in a subsequent revision of the nomenclature (Smith 1966). Moyle (1976) described the Santa Ana sucker as less than 16 centimeters (6.3 inches (in)) in length. The Santa Ana sucker is silvery below, darker along the back with irregular blotches, and the membranes connecting the rays of the tail are pigmented.

The Santa Ana sucker inhabits streams that are generally small and shallow, with currents ranging from swift (in canyons) to sluggish (in the bottomlands). All the streams are subject to periodic severe flooding (Moyle 1976). Santa Ana suckers appear to be most abundant where the water is cool (less than 22° Celsius) (72° Fahrenheit), unpolluted and clear, although they can tolerate and survive in seasonally turbid water (Moyle 1976, Moyle and Yoshiyama 1992). Santa Ana suckers feed mostly on algae, which they scrap off of rocks and other hard substrates. Larger fish generally feed more on insects than do smaller fish (Moyle 1976).

Santa Ana suckers generally live no more than 3 years (Greenfield *et al.* 1970). Spawning occurs from early April to early July. The peak spawning activity occurs in late May and June. Females produce approximately 4,000 to 16,000 eggs ranging in size from 78 millimeters (mm) (3.1 in) to 158 mm (6.2 in), respectively (Moyle 1976). The combination of early sexual maturity, protracted spawning period, and high fecundity should allow the Santa Ana sucker to quickly repopulate streams following periodic flood events that can decimate populations (Greenfield *et al.* 1970, Moyle 1976).

The native range of the Santa Ana sucker includes the Los Angeles, San Gabriel, and Santa Ana River drainage systems in Los Angeles, Orange, Riverside, and San Bernardino counties (Smith 1966). Although historic records are scarce, Santa Ana suckers presumably ranged from near the Pacific Ocean to the uplands in the Los Angeles

River in the San Gabriel River system, and to at least Pump House #1 (near the San Bernardino National Forest boundary) in the Santa Ana River (Swift *et al.* 1993; C. Swift, Loyola Marymount University, pers. comm. 1996). Within its native range, the species is now restricted to three noncontiguous populations—lower Big Tujunga Creek (Los Angeles River drainage), the East, West, and North Forks of the San Gabriel River (San Gabriel River drainage), and the lower and middle Santa Ana River (Santa Ana River drainage) (Moyle and Yoshiyama 1992). An introduced population also occurs in the Santa Clara River drainage system, Ventura and Los Angeles counties (Moyle 1976, Smith 1966, Swift *et al.* 1993). Although the Santa Ana sucker was described as common in the 1970s (Moyle 1976), the species has experienced declines throughout most of its range (Swift *et al.* 1993). The present distribution is as follows:

Los Angeles River system. Although historically present, the species may have been extirpated from the Los Angeles River (Swift *et al.* 1993). Santa Ana suckers are still found in portions of Big Tujunga Creek (a tributary of the Los Angeles River) below Big Tujunga Dam. Recent surveys downstream of Big Tujunga Dam found the species to be present but rare (fewer than 20 individuals collected at each site) in the vicinities of Delta Flat, Wildwood, and Big Tujunga Dam and abundant (an estimated 200 individuals collected) near Stoneyvale (M. Wickman, Angeles National Forest, *in litt.* 1996). The portions of Big Tujunga Creek occupied by the Santa Ana sucker constitute approximately 25 percent of the total remaining native range of the species. Approximately 60 percent of the range of the Santa Ana sucker in the Los Angeles River basin occurs on private lands. The remaining 40 percent of the range in the Los Angeles River basin occurs on Angeles National Forest lands managed by the U.S. Forest Service.

San Gabriel River system. In light of current threats and the prevailing absence of management, Moyle and Yoshiyama (1992) suggested that the only viable population of Santa Ana suckers existing within the species' native range occurs in the San Gabriel River drainage system. Dr. Tom Haglund (University of California, Los Angeles, *in litt.* 1996) reported surveys in 1995 below Morris Dam failed to locate any suckers. Therefore, in the San Gabriel River, the Santa Ana sucker appears extant only upstream of the confluence of the East, West, and North Forks of the San Gabriel River. Furthermore, the population of Santa Ana suckers in the

North Fork is small. The portions of the San Gabriel River occupied by the Santa Ana sucker constitute approximately 15 percent of the total remaining native range of the species. However, catch per unit effort information gathered during sampling suggests the San Gabriel River may contain the most individuals of any remaining population (R. Ally, California Department of Fish and Game (CDFG), *in litt.* 1996; M. Guisti, CDFG, *in litt.* 1996; J. Hernandez, California Department of Fish and Game, *in litt.* 1997; Wickman, *in litt.* 1996). Approximately 15 percent of the range of the Santa Ana sucker in the San Gabriel River basin occur on private lands. The remaining 85 percent of the range in the San Gabriel River basin occurs in the Angeles National Forest.

Santa Ana River system. Several hundred Santa Ana suckers were observed in the Santa Ana River downstream of Prado Dam in 1986 and 1987. In 1996, a general fish survey of the Santa Ana River below Prado Dam yielded only five suckers from a total of 271 fishes captured (M. Guisti, CDFG, *in litt.* 1996). In April 1987, only five suckers were found during a sampling effort above the Prado Dam from the City of Norco to about five kilometers upstream. Thus above the dam, fish were scarce, small individuals were absent, and definite evidence of reproduction was not obtained (Moyle and Yoshiyama 1992). In 1991, sampling indicated that although fishery habitat in the Santa Ana River was primarily fair to poor, Santa Ana suckers were abundant between Norco and Riverside (Chadwick and Associates 1992). Additionally, evidence suggested Santa Ana suckers were using tributaries including Tequesquite Arroyo, Sunnyslope Channel, and Anaza Park Drain for spawning and nurseries (Chadwick and Associates 1996).

The Santa Ana sucker survives in the lower portions of the Santa Ana River, from the Imperial Highway (State Route 90) to Rubideaux near the City of Riverside, but is now apparently absent from the upper reach of this river in the San Bernardino Mountains (Moyle and Yoshiyama 1992, Swift *et al.* 1993). The portions of the Santa Ana River occupied by the Santa Ana sucker constitute approximately 60 percent of the total remaining native range of the species. Approximately 95 percent of the range of the Santa Ana sucker in the Santa Ana River basin occurs on private lands. The balance is within State, county, city, and regional park lands, with a very small portion, three percent, on military lands. Chadwick and Associates (1996) noted that length-

frequency analysis indicates Santa Ana suckers are naturally reproducing in the Santa Ana River system. Furthermore, they asserted Santa Ana sucker population decreases in the river as evidenced by 1996 surveys (M. Guisti, *in litt.*, 1996) were due to high flows in the basin between 1991 and 1996. However, T. Haglund (*in litt.* 1996) contended the large number of suckers reported in tributaries are juveniles and may be the progeny of very few adults.

Santa Clara River system. An introduced population of Santa Ana suckers occurs in the Santa Clara River drainage. (Moyle 1976, Smith 1966, Swift *et al.* 1993). Santa Ana suckers were present in Piru Creek, a major Santa Clara tributary, by 1934 and in the Santa Clara River proper and its Sespe Creek tributary by 1940 (Buth and Crabtree 1982). Suckers occur from the estuary upstream to several miles upstream from the confluence of Sespe Creek, in Sespe Creek, and in several reaches in the Soledad Canyon area bordering the Angeles National Forest. Portions of the Santa Clara basin population are believed to have hybridized with another introduced species, the Owens River sucker (*Catostomus fumeiventris*) (Greenfield *et al.* 1970). This hybrid population occurs in the Sespe Creek area (Swift *et al.* 1993) in the lower to middle reach of the Santa Clara River. The hybrid population is separate and isolated (by dry streambed) from the introduced yet genetically pure Santa Ana suckers that occur in several portions of the upper reach of the Santa Clara River, in and downstream from Soledad Canyon. The dewatered sections of the Santa Clara River currently act as a barrier keeping the genetically pure Santa Ana suckers in the upper reach of the Santa Clara River from mixing with the hybrid population in the middle to lower reach of the river. In the past, the non-hybridized population of Santa Ana sucker in the Santa Clara River drainage system was thought to be large (Buth and Crabtree 1982). However, Haglund and Baskins (1992) reported that the Santa Clara River "population is in decline and throughout much of the drainage has hybridized with another introduced sucker." Sespe Creek contained a large number of suckers as recently as 1994; however, in 1996 suckers could not be captured in the creek (T. Haglund, *in litt.* 1996). The portions of the Santa Clara River occupied by the introduced pure and hybridized suckers, constitute approximately 50 percent of the total remaining range of the species. Over 90 percent of the range of this population

occurs on private lands with the balance on federally managed lands.

In summary, the Santa Ana sucker has declined throughout significant portions of its range. The Santa Ana sucker has lost approximately 75 percent of its native range. Recent population densities range from approximately 246 fish in 1.8 miles on the East Fork, San Gabriel River (Hernandez 1997) to five fish in 4.5 miles of the Santa Ana River (Guisti 1996). This apparent overall decline in population is particularly surprising given the high fecundity and apparent broad habitat tolerances of the species. Urbanization, water diversions, dams, introduced competitors and/or predators, and other human-caused disturbances likely are playing a role in the decline of the species. These same factors have led to the decline of other western suckers (Minckley *et al.* 1991, Scoppettone and Vinyard 1991).

Populations Proposed for Protection

The Santa Ana sucker is recognized as a full species and thus constitutes a taxon eligible for protection pursuant to the Act. We are proposing to list the Santa Ana sucker only in its native range, which consists of the Los Angeles, San Gabriel, and Santa Ana River basins. The Santa Clara River population of the Santa Ana sucker is presumed to be an introduced population, which is located outside of the species native range. Therefore, we are not proposing to designate the Santa Clara River population of Santa Ana sucker as threatened pursuant to the Act. However, we do believe that the Santa Clara River population is important for recovery of the Santa Ana sucker within the Los Angeles, San Gabriel, and Santa Ana River basins, and may be used in efforts to re-establish the species within its native range.

Previous Federal Action

On September 6, 1994, we received a petition under the Act to list the Santa Ana sucker (*Catostomus santaanae*), Santa Ana speckled dace (*Rhinichthys osculus* ssp.), and the Shay Creek threespine stickleback (*Gasterosteus aculeatus* ssp.) as endangered species. The petition was submitted by the Sierra Club Legal Defense Fund, Inc., on behalf of seven groups including the California-Nevada Chapter of the American Fisheries Society, The Nature School, California Sportfishing Protection Alliance, Friends of the River, Izaak Walton League of America, California Trout, and Trout Unlimited. We deferred processing of this petition because of other higher priority listing actions and severe funding constraints

imposed by a number of continuing resolutions between November 1995 and April 1996.

On July 9, 1996, we published a 90-day petition finding (61 FR 36021) that substantial information had been presented indicating listing may be warranted for the Santa Ana sucker, and on November 26, 1996, we published a notice Initiating a Status Review for the Santa Ana Sucker (61 FR 60073). On April 3, 1997, we published a notice of the 12-month finding for the petition to list the Santa Ana Sucker as endangered (62 FR 15872). We announced in this finding that listing the Santa Ana sucker was warranted but precluded by higher listing priorities. This proposal constitutes the final petition finding of warranted as well as the proposal to list the species.

The threats facing the Santa Ana sucker have not substantially changed since the 12-month finding was published, and we consider them to be imminent but of moderate magnitude (a lower priority for listing). However, staff at the Carlsbad Fish and Wildlife Office became available to prepare this proposed rule after completing listings for other species facing threats of higher magnitude. This proposed rule was prepared in accordance with our final listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority to handling emergency situations (Tier 1); second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications; and third priority (Tier 3) to processing proposed and final designations of critical habitat. The processing of this proposed rule falls under Tier 2.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Santa Ana sucker are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Moyle and Yoshiyama (1992) concluded that the native range of the Santa Ana sucker is largely coincident with the Los

Angeles metropolitan area. Intensive urban development of the area has resulted in water diversions, extreme alteration of stream channels, changes in the watershed that result in erosion and debris torrents, pollution, and the establishment of introduced of non-native fishes. Moyle and Yoshiyama (1992) stated, "[e]ven though Santa Ana suckers seem to be quite generalized in their habitat requirements, they are intolerant of polluted or highly modified streams." The impact associated with urbanization is likely the significant cause of the extirpation of this species from lowland reaches of the Los Angeles River and San Gabriel River.

As the Los Angeles urban area expanded, the Los Angeles, Santa Ana, and San Gabriel rivers were highly modified, channelized, or moved in an effort to either capture water runoff or protect property. As Moyle (1976) stated, "[t]he lower Los Angeles River is now little more than a concrete storm drain." The same is true for the Santa Ana and San Gabriel rivers. These channelized rivers and canals with uniform and altered substrates are not suitable for sustaining Santa Ana sucker populations (Chadwick and Associates 1996). Past and continuing projects have resulted (or will result) in channelization and concrete lining of the Santa Ana River channel throughout most of the native range of the Santa Ana sucker in Orange County. Urban development also threatens the Santa Ana sucker in the Los Angeles and Santa Ana river basins. In addition to physically altering the rivers, this urban development has resulted in changes in water quality and quantity, as well as the hydrologic regime of the systems.

All three river systems within the historic range of the Santa Ana sucker have dams that isolate and fragment fish populations. Dams likely have resulted in some populations being excluded from suitable spawning and rearing tributaries. Reservoirs also provide areas where introduced predators and competitors can live and reproduce (see factor C of this section). Seven Oaks Dam, now under construction upstream from the present range of Santa Ana sucker in the Santa Ana River, will prevent future upstream movement of fish and further isolate the Santa Ana sucker populations from their native range in the headwaters of the system.

The West Fork of the San Gabriel River is threatened by accidental high flows from Cogswell Reservoir, which have devastated this section of stream several times in the past (Moyle and Yoshiyama 1992; Haglund and Baskins 1992; T. Haglund, *in litt.* 1996). T.

Haglund (*in litt.* 1996) stated that, "[t]he West Fork population was wiped out by a sluicing event (to remove sediment by releasing a sudden flow of water) from Cogswell Dam in 1981 (anecdotal data) but recolonized from tributaries that acted as refugia. However, data (from CDFG, no date) suggest that the suckers have never returned to their former abundance." Santa Ana suckers have biological adaptations that allow the fish to quickly repopulate streams following periodic flood events. However, successive high flows threaten to eliminate the sucker population in the West Fork of the San Gabriel River by rapidly depleting the individuals soon after they migrate into the mainstem from tributaries. Proposals exist to sluice or otherwise remove sediment from the Cogswell, Morris, and San Gabriel reservoirs on the San Gabriel River system (W. Phillips, California Regional Water Quality Control Board, Los Angeles Region, *in litt.* 1998). The potential effects of these proposals, the deposition of large amounts of silt on the streambed and rapid increase in suspended sediments in the water column, threaten the Santa Ana sucker populations in the San Gabriel River.

The petitioners contended that suction dredge mining has increased in the Cattle Canyon tributary to the East Fork of the San Gabriel River, threatening the Santa Ana sucker. However, the petitioner did not provide evidence that suction dredging poses a threat to the existence of the fish. We received a comment during the petition review process indicating that no suction dredging has occurred in Cattle Canyon and suggesting that the petitioners took Moyle and Yoshiyama (1992) out of context. (G. Hobbs, Public Lands Action Committee, *in litt.* 1996). The commenter also questioned the veracity of the report by Moyle and Yoshiyama and suggested suction dredging is beneficial to Santa Ana sucker.

The CDFG, (P. Wolf, *in litt.* 1996) indicated they are not aware of suction dredging in the Cattle Canyon tributary to the East Fork of the San Gabriel River. However, they had issued nearly 200 Special Dredge Permits for the East Fork of the San Gabriel River in 1995, the first time the East Fork had been dredged in 15 years.

Surveys in June of 1996 and 1997 indicate the East Fork of the San Gabriel River continues to maintain a healthy Santa Ana sucker population (R. Ally, CDFG, *in litt.* 1996; J. Hernandez, CDFG, *in litt.* 1997). Few studies exist on the impacts of suction dredging on fishes and none that specifically address Santa

Ana suckers. In their review of the literature, Harvey *et al.* (1995) concluded that small larvae of fish such as suckers are easily damaged by physical disturbance, but adults and juveniles are unlikely to be directly affected by entrainment because they either avoid or survive passage through suction dredges. The impact of increased suspended sediment is difficult to predict because of the variability in production of suspended sediment and the ways biota may be affected. Possible impacts associated with suction dredging include changes in stream substrates or food supply. Based on this information, we conclude that suction dredging may impact larvae and eggs of Santa Ana suckers, particularly if dredging is concentrated in an area containing spawning suckers.

Although the Santa Ana sucker evolved under conditions that presumably included droughts, some water diversions and management practices threaten the continued existence of the species. For example, stretches of the upper Santa Ana River have been permanently dewatered, eliminating Santa Ana sucker populations and migration through these reaches to other areas (Swift *et al.* 1993, Swift 1996). As previously discussed, channelization of the rivers of the Los Angeles Basin, water quality degradation, and dam construction have all combined to lower the quality of and eliminate historic Santa Ana sucker habitat. Future human population and urban growth of the basin will further stress the natural resources of the basin and likely exacerbate these conditions.

Fluctuations in water quality in the Santa Ana and Los Angeles Rivers may threaten the Santa Ana sucker (Moyle and Yoshiyama 1992). Several researchers contend nutrient loading rather than acute toxicity may threaten the fish (C. Swift and T. Haglund, pers. comm. 1996). However, in 1991 Chadwick & Associates (1992) found suckers to be common in some areas upstream from Prado Dam where several water treatment facilities discharge into the Santa Ana River. They attribute the high sucker numbers to adequate water supplies discharged by the treatment facilities and the presence of tributaries that offer spawning areas and refugia to the suckers. Nevertheless, Santa Ana sucker numbers are much reduced in the Santa Ana River (Moyle and Yoshiyama 1992; P. Wolf, *in litt.* 1996). Although water quality tolerances of this species are unknown, in general, point and non-point source pollution (e.g., urban runoff, sedimentation, etc.) have significantly degraded the aquatic resources in most of the native range of

the Santa Ana sucker. In an effort to identify which water quality parameters affect the Santa Ana sucker, the United States Geologic Survey, Biological Resources Division in conjunction with us, the Orange County Water District, the County of Orange, California, and the Los Angeles County Department of Public Works, is initiating a study of the water quality tolerances of the species. Based on currently available information, we conclude that increased turbidity and associated deposition of fine particles and sand likely threaten the Santa Ana sucker population in the Santa Ana River by decreasing the availability of cobble and other hard substrates preferred by the species (Moyle and Yoshiyama 1992).

B. Overutilization for commercial, sporting, scientific, or educational purposes. The CDFG reported Santa Ana suckers being illegally caught with gill and throw nets in the Santa Ana River below Prado Dam (Lt. M. Maytorena, CDFG, pers. comm. 1997). The relative impact of these collections on the species is unknown.

C. Disease or predation. Moyle and Yoshiyama (1992) concluded that introduced brown trout (*Salmo trutta*) may have caused the extirpation of the Santa Ana sucker from the upper San Gabriel River in the San Bernardino Mountains. The petitioners noted that centrarchids (sunfishes) and bullheads prey on suckers. In the Los Angeles River such introduced predators aggregate in pools during droughts, presumably feeding on native fishes including Santa Ana suckers (Sierra Club Legal Defense Fund 1994). Similar conditions exist in the Santa Ana River. Predation by introduced fishes in combination with habitat destruction has been implicated in the decline of other species of suckers in the southwest (Minckley *et al.* 1991, Scoppettone and Vinyard 1991). Accordingly, introduced predators and competitors likely threaten the continued existence of Santa Ana suckers throughout most of the species' range.

D. The inadequacy of existing regulatory mechanisms. Despite the presence of existing regulatory mechanisms and conservation activities accomplished to date by private, State, and Federal entities, the Santa Ana sucker has continued to decline throughout a significant portion of its range. Existing regulatory mechanisms that may provide some protection for the Santa Ana sucker include—(1) the California Endangered Species Act, (2) the California Environmental Quality Act (CEQA), (3) the National Environmental Policy Act (NEPA), (4)

the Clean Water Act, (5) the Federal Endangered Species Act in those cases where the Santa Ana sucker occurs in areas where other federally listed species are located, and (6) land management or conservation measures by Federal, State, or local agencies or by private groups and organizations.

The State of California considers the Santa Ana sucker a "species of special concern." However, the Santa Ana sucker is not listed as endangered or threatened by the State, and "species of special concern" are afforded no protection under the California Endangered Species Act.

The California Environmental Quality Act (CEQA) requires full public disclosure of the potential environmental impact of proposed projects. This law also obligates disclosure of environmental resources within proposed project areas and may enhance opportunities for conservation efforts. However, CEQA does not guarantee that such conservation efforts will be implemented. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency may either require mitigation for effects through changes in the project or decide that overriding considerations justify approval of a project with significant impacts. In the latter case, projects may be approved that cause significant environmental damage, such as resulting in the loss of sites supporting State-listed species. Protection of listed species through CEQA is, therefore, not assured.

Local lead agencies responsible under CEQA have made determinations that have adversely affected, or would adversely affect, the Santa Ana sucker and its habitat. Examples of projects that have been completed or are currently undergoing the review process under CEQA and/or NEPA and will impact this species include the Santa Ana River Mainstem Project, which contains multiple projects including Seven Oaks Dam and the raising of Prado Dam, and continued channelization of the Santa

Ana River in Orange County. These reviews have not addressed the effects of the proposed actions on Santa Ana sucker. Similarly, on the San Gabriel River, proposed silt removal from Cogswell Dam may affect the sucker. While projects altering a stream course are subject to review under section 1601 or 1603 of the California Fish and Game Code, such State regulations have not prevented habitat loss or sufficiently protected habitat to prevent the decline of the Santa Ana sucker.

Section 404 of the Clean Water Act represents the primary Federal law that affords some protection for the Santa Ana sucker because the sucker occurs in an aquatic environment. However, the Clean Water Act, by itself does not provide adequate protection for Santa Ana sucker. Although the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. § 1251), no specific provisions exist that address the need to conserve rare species. The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. Under section 404, nationwide permits may be issued for certain activities that are considered to have minimal impacts, including minor dredging and discharges of dredged material, some road crossings, and minor bank stabilization (December 13, 1996; 61 FR 65873). However, the Corps seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized. Activities that do not qualify for authorization under a nationwide permit, including projects that would result in more than minimal adverse environmental effects, either individually or cumulatively, may be authorized by an individual or regional general permit, which are typically subject to more extensive review. Regardless of the type of permit deemed necessary under section 404, rare species such as Santa Ana sucker may receive no special consideration with regard to conservation or protection unless they are listed under the Act.

As part of the section 404 review process, we provide comments to the Corps on nationwide permits and individual permits. Our comments are only advisory, although procedures exist for elevating permit review within the agencies when disagreements between us and the Corps arise concerning the issuance of a permit. In practice, the section 404 permit review process has often proven to be inadequate to protect unlisted but rare species such as the Santa Ana sucker.

The Santa Ana sucker may receive a small amount of benefit from the possible presence of the least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii extimus*) on the Santa Ana River. These two animals are federally listed species. However, this benefit is diminished because these species occupy different areas and habitats and have dissimilar ecological requirements from the Santa Ana sucker. Vireos and flycatchers occur in well-developed streamside vegetation. Santa Ana suckers inhabit streams that are generally small and shallow, and subject to periodic severe flooding. Overlapping range with these listed birds provides little, if any, protection for the Santa Ana sucker. The San Bernardino kangaroo rat (*Dipodomys merriami parvus*) is another federally listed species that occurs along the Santa Ana River; however, it occurs upstream from the present known range of the Santa Ana sucker. Therefore, the listing of the San Bernardino kangaroo rat will have little effect on the status or protection afforded the sucker.

Similarly, critical habitat designation for the least Bell's vireo and southwestern willow flycatcher offers little direct benefit to the Santa Ana sucker because these birds occupy different areas and habitats and have dissimilar ecological requirements from the Santa Ana sucker. However, these designations may have discouraged some ecologically damaging projects in the floodplain from being proposed. This preventative effect may have benefitted the Santa Ana sucker.

Forest Service lands encompass approximately 20 percent of the current known range of the Santa Ana sucker. Although a small portion of the range is within a designated wilderness area, the remaining portions of the range on Forest Service lands are not under wilderness management. Wilderness designation offers no direct regulatory protection to the sucker, but it does reduce some human induced impacts on the stream. For example, machines that require motors are excluded from these areas. This reduces or eliminates all motorized recreation and mining activities within the wilderness areas. These types of activities may harm Santa Ana sucker populations and thus wilderness designation offers some indirect benefit to the species. However, thousands of people from the Los Angeles metropolitan area and adjacent urban communities annually use both wilderness and nonwilderness areas within the Angeles National Forest's Big Tujunga Creek and San Gabriel Forks areas for recreation. The impact of the

large number of people using these areas is destruction of streambank vegetation, streambank erosion, and the disposal of untreated human waste and other refuse into the creeks, all of which degrade water quality.

The status and threats to the Santa Ana sucker reflect the inadequacy of existing Federal, State, and local ordinances and statutes to protect and provide for the conservation of this fish.

E. Other natural or manmade factors affecting its continued existence. Periodic wildfires may adversely affect Santa Ana suckers by causing direct mortality, eliminating vegetation that shades the water and moderates water temperature, or producing silt and ash laden runoff that can significantly increase the turbidity of rivers. Recent fires, including the 1996 Biedebach fire, burned near the vicinity of Prairie Fork on the East Fork of the San Gabriel River. The fires did not burn the riparian corridor, but may contribute increased runoff and siltation to the creek.

The high degree of fragmentation of the remaining Santa Ana sucker populations makes the species especially vulnerable to random events, environmental factors, and loss of genetic variability. A small population size increases the rate of inbreeding and may allow increased expression of deleterious recessive genes occurring in the population (known as inbreeding depression). Loss of genetic variability, through random genetic drift (random gene frequency changes in a small population due to chance), reduces the ability of small populations to respond successfully to environmental stresses. Most of the lowland river habitats have been lost and the remaining populations of Santa Ana suckers are low in numbers, with the exception of the San Gabriel Forks populations. Random events such as floods, variations of annual weather patterns, predation and associated demographic uncertainty (conditions affected by chance events, such as sex ratios, that influence survival and reproduction in small populations) or other environmental stresses and human-caused factors such as chemical spills, may lead to the demise of the remnant populations in the Los Angeles or Santa Ana basins.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Santa Ana sucker (*Catostomus santaanae*) as threatened. While not in immediate danger of extinction, the Santa Ana sucker is

likely to become an endangered species in the foreseeable future if the present threats and declines continue. Based on this evaluation, the preferred action is to list the Santa Ana sucker (*Catostomus santaanae*) as threatened.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (I) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the economic benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

We find that critical habitat is not determinable for the Santa Ana sucker at this time. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent.

In designating critical habitat, we consider the following requirements of the species: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or

shelter; sites for breeding, reproduction, or rearing of offspring; and, generally, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (see 50 CFR 424.12(b)). In addition to these factors, we also focus on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and may require special management considerations or protection. The essential features for the Santa Ana sucker may include, but are not limited to, spawning sites, food resources, and water quality and quantity (see 50 CFR 424.12(b)).

Williams and Finnley (1977) stated that the most serious and frequent threat to a species' existence is alteration of its natural habitat. Changes come in various ways, but they generally are physical, chemical, or biological. In an aquatic ecosystem, the components including a species' primary constituent elements are so tightly intertwined that effects on one alter others. Physical changes are the most obvious; they include dams, water diversion structures, stream channelization and dredging, as well as sedimentation and turbidity from urban runoff. Chemical alteration from pollution such as industrial chemicals, pesticides, and high concentrations of nutrients cause damage to the aquatic environment, frequently upsetting the acid-base aquatic balance and reducing levels of dissolved oxygen in the water column. Biological alterations can occur from introducing non-native species into the habitat resulting in predation, competition, or hybridization, any of which may adversely affect a native species. In the case of the Santa Ana sucker, any one or combination of such physical, chemical, or biological changes may result in negative impacts to the primary constituent elements and exceed the environmental limitations of the species thereby reducing population numbers, decreasing reproductive success, or altering species distribution through habitat fragmentation.

We conclude that there is insufficient knowledge and understanding of the biological needs and environmental limitations of the Santa Ana sucker and the primary constituent elements of its habitat to determine critical habitat for the fish. We think that the Santa Ana sucker is intolerant of highly polluted waters but little information is available concerning these possible limiting factors. Furthermore, in the Santa Ana River, suckers remain extant, although rare, in the lowlands where water

quality is degraded as compared to the headwaters. We need additional information on the environmental limits of the sucker to enable us to accurately designate critical habitat for the Santa Ana sucker throughout its range. The physical and biological features including but not limited to water chemistry, water temperature, instream flows, streambed substrate and structure, and fauna and flora of the aquatic environment that supports the Santa Ana sucker are the features about which we need additional information. In an effort to gain these data, the Orange County Water District, the County of Orange, California, and the Los Angeles County Department of Public Works are working cooperatively with the National Fish and Wildlife Foundation, the Biological Resources Division of the United States Geologic Survey, and us to fund and implement research on the environmental limitations of the Santa Ana Sucker. The study will identify environmental parameters, including water quality (e.g., dissolved oxygen, turbidity, water chemistry, and water temperature) and some physical variables (e.g., flows, and streambed substrate and structure) associated with variations in population densities. If correlations are found, future research will focus on the variable(s) most likely to limit sucker populations.

The study began in late 1998 and results should be available in 2000. We will then reevaluate our knowledge of the species and, if determined prudent, propose critical habitat for the Santa Ana sucker. We will continue in our efforts to obtain more information on Santa Ana sucker biology and ecology, including distribution, population density, and essential habitat characteristics particularly in regard to water quality. We will use the information resulting from these efforts to identify measures needed to achieve conservation of the species, as defined under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The

protection required of Federal agencies are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a federally listed species or result in destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must consult with us.

Federal agencies expected to have involvement with section 7 regarding the Santa Ana sucker include the Army Corps of Engineers and the Environmental Protection Agency because of their permit authority under section 404 of the Clean Water Act. The Forest Service will be involved through its activities on Angeles National Forest and Los Padres National Forest. These agencies either administer lands/waters containing the Santa Ana sucker or authorize, fund, or otherwise conduct activities that may affect this species.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special

purposes consistent with purposes of the Act.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. We believe the following actions would not likely result in a violation of section 9:

(1) Existing discharges into waters supporting these species, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to sections 402, 404, and 405 of the Clean Water Act including discharges regulated under the National Pollutant Discharge Elimination System (NPDES)).

(2) Actions that may affect the Santa Ana sucker and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with any reasonable and prudent measures given by us in accordance with section 7 of the Act.

(3) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices.

(4) Development and construction activities designed and implemented in accordance with State and local water quality regulations.

(5) Existing recreational activities, such as swimming, wading, canoeing, and fishing.

(6) Possession, transport within or between States, and import and export of Santa Ana suckers that have not been sold or offered for sale and were legally collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxa to the list of threatened and endangered species.

Activities that we believe could potentially harm the Santa Ana sucker and result in a violation of section 9 of the Act include, but are not limited to:

(1) Take of Santa Ana suckers without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions.

(2) Possess, sell, deliver, carry, transport, or ship illegally taken Santa Ana suckers.

(3) Unauthorized interstate and foreign commerce (commerce across

state and international boundaries) and import/export.

(4) Introduction of non-native species that compete or hybridize with, or prey on Santa Ana suckers.

(5) Unauthorized destruction or alteration of Santa Ana sucker habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, water quality, water temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

(6) Discharges or dumping of toxic chemicals, silt, organic waste, or other pollutants (such as may result from mining, land development or land management activities) into waters supporting Santa Ana suckers that results in death or injury to the species or results in the destruction or degradation of cover, channel stability, substrate composition, water quality, water temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone 503/231-6241; facsimile 503/231-6243)

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on the Santa Ana sucker or its habitat;

(5) Information regarding the introduction of the Santa Clara River population and the role it may play in the recovery of this species.

We will take into consideration your comments and any additional information received on this species when making a final determination regarding this proposal. The final determination may differ from this proposal based upon the information we receive.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Field Supervisor of the Service's Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the "Supplementary Information" section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing,

etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to: Exsec@ios.doi.gov.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this document is Dr. Paul J. Barrett, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Species in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES		*	*	*	*		
Sucker, ...	<i>Catostomus</i>	U.S.A. (CA)	Los Angeles, ...	T		NA	NA
Santa Ana	<i>santaanae</i>		San Gabriel, ...				
			and Santa Ana				
			River basins.				
		*	*	*	*		

Dated: January 14, 1999

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99-1700 Filed 1-25-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF36

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Critical Habitat Determinations for the Cactus Ferruginous Pygmy-Owl and the Plant *Lilaeopsis schaffneriana* ssp. *recurva*, (Huachuca Water Umbel)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that public hearings will be held on the proposed determination of critical habitat for the plant *Lilaeopsis schaffneriana* ssp. *recurva*, (Huachuca water umbel), and the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). The hearings will allow all interested parties to submit oral comments on the proposals.

DATES: Each public hearing will be for the purpose accepting public comment on either or both proposals. These hearings will be held from 7 p.m. to 9 p.m. on February 10, 1999 in Coolidge, Arizona; on February 11, 1999 in Sierra Vista, Arizona; and on February 12, 1999 in Tucson, Arizona. The comment period for these proposals will remain open until March 1, 1999. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on these proposals.

ADDRESSES: The public hearings will be held at the Coolidge Unified School District Auditorium, 800 West Northern Avenue, Coolidge, Arizona; Buena Performing Arts Center (Buena High School), 5225 Buena School Boulevard,

Sierra Vista, Arizona; and Leo Rich Theatre (Tucson Convention Center), 260 South Church Avenue, Tucson, Arizona. Oral and written comments will be accepted at the hearings. Additionally, written comments can be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640-2720 ext. 240; facsimile 602/640-2730).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of *Glaucidium brasilianum cactorum* is listed as an endangered species. The Service proposed designation of approximately 730,565 acres of riverine riparian habitat and upland habitat as critical habitat for the cactus ferruginous pygmy-owl pursuant to the Endangered Species Act of 1973, as amended (Act). Proposed critical habitat is in Pima, Cochise, Pinal, and Maricopa counties, Arizona as described in the **Federal Register** (63 FR 71820; December 30, 1999).

The Huachuca water umbel is a plant found in cienegas (desert marshes), streams and springs in southern Arizona and northern Sonora, Mexico, typically in mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring. The Service proposed critical habitat including a total of 83.9 kilometers (52.1

miles) of streams or rivers in Cochise and Santa Cruz counties, Arizona (63 FR 71838; December 30, 1999).

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. However, due to the expeditious treatment of these proposed critical habitat determinations under Federal District Court order as described in the proposed rules, the Service has arranged for three public hearings to be held in proximity to the areas proposed for critical habitat designation. Each hearing will be held to accept information for both the pygmy-owl and the water umbel critical habitat proposals on the dates and at the addresses described above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearings or mailed to the Service.

Legal notices announcing the dates, times, and locations of the hearings will be published in newspapers concurrently with this **Federal Register** notice. The current comment period on this proposal closes on March 1, 1999. Written comments may be submitted to the Service office in the **ADDRESSES** section.

Author: The primary author of this notice is Jeffrey A. Humphrey (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531-1544).

Dated: January 20, 1999.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 99-1692 Filed 1-25-99; 8:45 am]

BILLING CODE 4310-55-U

Notices

Federal Register

Vol. 64, No. 16

Tuesday, January 26, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB-99-03]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting.

Name: National Advisory Committee for Tobacco Inspection Services.

Date: February 26, 1999.

Time: 9 a.m.

Place: Campbell House Inn, Campbell Room, 1375 Harrodsburg Road, Lexington, Kentucky 40504.

Purpose: To elect officers, review regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) and to discuss the level of tobacco inspection services currently provided to producers by AMS. The Committee will recommend the desired level of services to be provided to producers by AMS and an appropriate fee structure to fund the recommended services for the 1999-2000 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 205-0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: January 21, 1999.

John P. Duncan III,

Deputy Administrator, Tobacco Programs.
[FR Doc. 99-1784 Filed 1-25-99; 8:45 am]

BILLING CODE 3410-02-U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98-126-1]

AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Rice Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for certain rice transformation events, which have been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these rice transformation events present a plant pest risk.

DATES: Written comments must be received on or before March 29, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-126-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-126-1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Heron, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-5141. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734-4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On November 25, 1998, APHIS received a petition (APHIS Petition No. 98-329-01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for rice (*Oryza sativa* L.) designated as Liberty Link[®] Rice Transformation Events LLRICE06 and LLRICE62 (rice transformation events LLRICE06 and LLRICE62), which have been genetically engineered for tolerance to the herbicide glufosinate. The AgrEvo petition states that the subject rice transformation events should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, rice transformation events LLRICE06 and LLRICE62 have been genetically engineered to contain the *bar* gene derived from *Streptomyces hygroscopicus*, strain HP632. The *bar* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. Expression of the *bar* gene is controlled by 35S promoter and terminator sequences derived from the plant pathogen cauliflower mosaic virus. The direct gene transfer method was used to transfer the added genes into the parental rice varieties, M202 (LLRICE06) and Bengal (LLRICE62).

The subject rice transformation events have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from a plant pathogen. Rice transformation events LLRICE06 and LLRICE62 have been field tested in the United States since 1997 under APHIS notifications. In the process of reviewing the notifications for the field trials of this rice, APHIS determined that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U. S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. AgrEvo has begun consultation with FDA on the subject rice transformation events.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's rice transformation events LLRICE06 and LLRICE62, and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 20th day of January 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1783 Filed 1–25–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Field Crops Objective Yield Surveys.

DATES: Comments on this notice must be received by April 1, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS:

Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Field Crops Objective Yield.

OMB Number: 0535–0088.

Expiration Date of Approval: July 31, 1999.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production. The Field Crops Objective Yield Surveys objectively predict yields for wheat, corn, cotton, soybeans, and potatoes. Sample fields are randomly selected for these crops. Plots and laid out and periodic counts and measurements are taken and used to forecast production during the growing season. Production forecasts are published in USDA Crop Production reports. An increase in the number of plots is planned. The Field Corps Objective Yield Surveys has approval from OMB for a 3-year period. NASS intends to request that the surveys be approved for another 3 years.

These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 19 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 8,100.

Estimated Total Annual Burden on Respondents: 4,200 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720-5778.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250-2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC, January 13, 1999.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 99-1684 Filed 1-25-99; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Suspension of Direct and Guaranteed Loans for Hog Production

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The swine industry is currently in crisis due to over supply and low prices. The Secretary is concerned that, during this period of low prices, the availability of certain RBS credit programs may facilitate additional production capacity that will prolong the current hog price depression. Additional capacity is also likely to damage the prospects for long-term financial recovery in the industry. Continued financial stress on hog

farmers may force and accelerate concentration of the production, processing, and marketing of hogs into fewer hands. This notice temporarily suspends direct Rural Economic Development Loan and Business and Industry Guaranteed Loan financing for the construction of specialized facilities used for the production of hogs.

FOR FURTHER INFORMATION CONTACT:

William F. Hagy III, Deputy Administrator, Business Programs, Rural Business-Cooperative Service, 1400 Independence Avenue, SW., Washington, D.C. 20250-3220, telephone (202) 720-7287.

DATES: January 26, 1999. This notice will be in effect until rescinded by the National Office.

SUPPLEMENTARY INFORMATION: State Offices shall direct all questions regarding this notice to the Deputy Administrator, Business Programs. Any application for a direct or guaranteed loan for the construction or expansion of a specialized hog production facility will be accepted but held in abeyance until the suspension is lifted. A specialized hog production facility is defined as any building or enclosure and related equipment specifically to house, raise, or feed hogs of any size, age, or market class.

The loan processing time frames will not apply to these applications while the suspension is in effect. The State Office will notify both the applicant and the lender that the application is being held. All guaranteed lenders should be notified of the suspension.

Direct and guaranteed loan applications for purchase, refinancing, maintenance, or repair of facilities currently in production will continue to be processed. Direct and guaranteed loan applications that were received by Rural Development State Offices on or before the date of this notice will be processed through to completion and will not be affected by this temporary suspension. In all other cases, applications will only be processed when the Government's interest will be imperiled if the application is not processed.

Dated: January 14, 1999.

William F. Hagy III,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 99-1505 Filed 1-25-99; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000 Location Report for American Flag Vessels and Census 2000 Information for American Flag Vessels

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the draft forms should be directed to Charles Moore, Bureau of the Census, SFC2, MS-5700, Room 1304, 4301 Suitland Road, Suitland, Maryland 20746, phone number (301) 457-2050.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau must provide everyone in the United States and Outlying Areas the opportunity to be counted in the Census 2000, including persons living on vessels. To that end, the Census Bureau is currently developing final plans for implementing the Census 2000 Maritime Vessel Enumeration activities. The proposed Census 2000 Location Report for American Flag Vessels and Census 2000 Information for American Flag Vessels operation will greatly facilitate the enumeration of the ship board population and is similar to other vessel enumerations conducted in previous censuses. Beginning in 1999 we will work with the Maritime Administration, American Tuna Boat Association, and other vessel organizations to obtain a list of vessel owners/operators. Each owner/operator will be sent a letter asking for a list of ships and an estimated number of crew and passengers. We will then send questionnaire packages to the owners/operators for each vessel they report and ask that they distribute the packages to

their vessels. The packages will consist of shipboard census reports (SCRs) (previously cleared by the Office of Management and Budget), envelopes, Privacy Act Notices, and a Form D-47, Census 2000 Location Report for American Flag Vessels. The ship's captain/master is asked to complete the Location Report and return it with the completed SCRs to the Census Bureau's National Processing Center in Jeffersonville, IN. Each owner/operator is asked to complete a Form D-34, Census 2000 Information for American Flag Vessels for any ship that did not receive a packet. The Census Bureau will use the information on the D-34 to prepare and mail questionnaire packets to these missed ships. The information on the D-47 will be used to geocode each vessel to its correct census geography.

II. Method of Collection

The Census Bureau will mail forms D-34 and D-47 to the owners/operators and ship's captains/masters who will manually complete the forms and return them to the Census Bureau for geocoding and additional questionnaire mailings, as necessary.

III. Data

OMB Number: Not available.

Form Number: D-34, D-47.

Type of Review: Regular Submission.

Affected Public: American flag vessel owners/operators and ship's captains/masters.

Estimated Number of Respondents: We estimate that 780 American Flag Vessels will be reported to us initially, and that 30 ships will be missed in our initial questionnaire package mailing.

Estimated Time Per Response: Form D-34—2 minutes; Form D-47—5 minutes.

Estimated total Annual Burden: 66 hours.

Estimated total Annual Cost: There is no cost to respondents for providing information on this operation, except for a few minutes of their time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden including hours and cost of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99-1781 Filed 1-25-99; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Competitive Enhancement Needs Assessment Survey Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 4525, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense and to develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to

meet defense program needs. The information collected from voluntary surveys will be used to assist small- and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely by cutbacks in defense spending and military base closures.

II. Method of Collection

Written survey.

III. Data

OMB Number: 0694-0083.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 2,500.

Estimated Total Annual Cost: \$0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 21, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99-1782 Filed 1-25-99; 8:45 am]

BILLING CODE 3510-JT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-834]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary determination of antidumping duty investigation.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") published the preliminary determination of its antidumping duty investigation of stainless steel sheet and strip in coils ("SSSS") from Korea. This investigation covers three respondents, Pohang Iron and Steel Co., Ltd. ("POSCO"), Taihan Electric Wire Co., Ltd. ("Taihan"), and Incheon Iron and Steel Co., Ltd. ("Inchon").

POSCO submitted a ministerial error allegation on December 28, 1998 with respect to the preliminary determination signed on December 17, 1998. Based on the correction of certain significant ministerial errors made in the preliminary determination, we are amending our preliminary determination. This amendment is in accordance with 19 CFR 351.224(e).

EFFECTIVE DATE: January 26, 1999.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1398 (Dybczak) or (202) 482-3818 (Johnson).

SUPPLEMENTARY INFORMATION:**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 351 (1998).

Significant Ministerial Errors

Under 19 CFR 351.224, a significant ministerial error is defined as a correction which, by itself or in combination with other errors, (1) would result in a change of at least 5

absolute percentage points in, but not less than 25 percent of, the weighted average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. We are amending the preliminary determination of sales at less than fair value for SSSS from Korea to reflect the correction of a significant ministerial error made in the margin calculations regarding POSCO in that determination, pursuant to 19 CFR 351.224(g)(1). We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Scope of the Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05,

7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of

plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."¹

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is

currently available under proprietary trade names such as "Gilphy 36."²

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."³

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).⁴ This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent,

phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."⁵

Period of Investigation

The period of investigation ("POI") is April 1, 1997 through March 31, 1998.

Background

On December 17, 1998, the Department issued its notice of preliminary determination of the antidumping duty investigation of SSSS from Korea (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea* (64 FR 137 (January 4, 1999))). We preliminarily calculated a dumping margin of 12.35 percent based on POSCO's sales.

On December 28, 1998, POSCO submitted timely written allegations that the Department made a ministerial error which resulted in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted-average margin calculated in the preliminary determination. POSCO alleged that the Department erred by (1) failing to apply a weighted-average exchange rate in calculating normal value; (2) inadvertently excluding all of POSCO's sales to customers that had been affiliated only during a portion of the POI; and (3) failing to include deductions for inland freight transplant to warehouse and the warehousing expenses in calculating normal value.

The Department preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, i.e., as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department stated that it would use daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1, 1997 and December 31, 1997, while applying a standard exchange rate model with a modified benchmark for January to February, 1998. However, in the final stages of the margin calculation program, the Department inadvertently used these "modified" daily rates instead of a weighted-average exchange rate. For a further discussion of this

² "Gilphy 36" is a trademark of Imphy, S.A.

³ "Durphynox 17" is a trademark of Imphy, S.A.

⁴ This list of uses is illustrative and provided for descriptive purposes only.

⁵ "GIN4 Mo", "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

¹ "Arnokrome III" is a trademark of the Arnold Engineering Company.

issue, see *Analysis of Alleged Ministerial Errors—Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea* (“Analysis Memo”), dated January 19, 1999.

With respect to sales made to unaffiliated parties during the POI, POSCO had made sales to unaffiliated parties that had previously been affiliated. In identifying and excluding sales to affiliated parties that had failed the “arm’s length test,” the margin calculation program did not differentiate between sales made before and after the companies were unaffiliated, and therefore, all sales to these companies were inadvertently excluded in the margin calculation program. See *Analysis Memo*. In addition, inland freight from plant to warehouse and warehousing expenses were also inadvertently excluded from the calculation of movement expense used to determine normal value. As both of these expenses are standard deductions to normal value, their exclusion was a clerical error on the part of the Department. For a further discussion of this issue, see *Analysis Memo*.

In conclusion, we agree with POSCO that we inadvertently used daily rates instead of a weighted-average exchange rate, that sales made to unaffiliated companies were erroneously excluded from the calculation of normal value, and that deductions for inland freight from plant to warehouse and warehousing expenses were inadvertently excluded from the calculation of normal value. Because these errors taken together constitute a significant ministerial error, as defined in 19 CFR 351.224(g), we are amending our preliminary determination. In accordance with this amendment, we will amend POSCO’s cash deposit rate from 12.59 to 3.92 percent, and the All Other’s rate from 12.59 to 3.92 percent. See “Suspension of Liquidation” section, below.

Amended Preliminary Determination

As a result of our correction of these ministerial errors, we have determined the following amended weighted-average dumping margins apply:

Manufacturer/exporter	Margin percentage
Inchon	0.00
POSCO	3.92
Taihan Electric Wire	58.79
All Others	3.92

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart above. We will also instruct the Customs Service not to require cash deposits for manufacturers/exporters with *de minimis* or zero margins. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the U.S. International Trade Commission (“ITC”) of our amended determination. If our final determination is affirmative, the ITC will determine before July 6, 1999, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 23, 1999, and rebuttal briefs, limited to issues raised in case briefs, no later than March 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held no later than March 3, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, no later than February 3, 1999. Requests should contain: (1) the party’s name, address, and telephone number; (2) the number of participants; and (3) a list of the

issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination no later than May 19, 1999.

This amended preliminary determination and notice are in accordance with section 733(d)(2) of the Act and 19 CFR 351.224 of the Department’s regulations.

Dated: January 14, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–1777 Filed 1–25–99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Pennsylvania, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–043. *Applicant:* University of Pennsylvania, Philadelphia, PA 19104–6085. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 63 FR 50211, September 21, 1998. *Order Date:* July 1, 1998.

Docket Number: 98–044. *Applicant:* University of North Dakota School of Medicine & Health Sciences, Grand Forks, ND 58202. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 63 FR 50211, September 21, 1998. *Order Date:* April 14, 1998.

Docket Number: 98–045. *Applicant:* The University of Texas Health Science Center at San Antonio, San Antonio, TX 78284–7750. *Instrument:* Electron Microscope, Model EM208S. *Manufacturer:* N.V. Philips, Czech Republic. *Intended Use:* See notice at 63 FR 50556, September 22, 1998. *Order Date:* July 9, 1998.

Docket Number: 98–048. *Applicant:* North Carolina State University, Raleigh, NC 27695. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan.

Intended Use: See notice at 63 FR 58368, October 30, 1998. *Order Date:* August 13, 1998.

Docket Number: 98-055. *Applicant:* Mount Sinai School of Medicine, New York, NY 10029. *Instrument:* Electron Microscope and Accessories, Model H-7500. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 63 FR 63292, November 12, 1998. *Order Date:* June 30, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 99-1774 Filed 1-25-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Minnesota, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 98-046. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* (2) Bioelectric Impedance Tomographs, Models APT/EIT and Mk3a EIT/APT. *Manufacturer:* University of Sheffield, United

Kingdom. *Intended Use:* See notice at 63 FR 50556, September 22, 1998. *Reasons:* The foreign instrument provides real time dynamic imaging of cardiac blood volume changes and characterization of tissues such as the lung using 16-channel recording for bioelectric impedance tomography. *Advice received from:* National Institutes of Health, December 10, 1998.

Docket Number: 98-049. *Applicant:* North Carolina State University, Raleigh, NC 27695-7212. *Instrument:* Oxylite Oxygen Monitor, Model 2000. *Manufacturer:* Oxford Optonix Ltd., United Kingdom. *Intended Use:* See notice at 63 FR 58368, October 30, 1998. *Reasons:* The foreign instrument provides an optical technique that incorporates a non-metallic fiber optic probe that may remain in-situ during magnetic resonance imaging. *Advice received from:* National Institutes of Health, December 10, 1998.

Docket Number: 98-056. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Piezo Manipulator, Model PPM-150FU. *Manufacturer:* Prime Tech Ltd., Japan. *Intended Use:* See notice at 63 FR 63292, November 12, 1998. *Reasons:* The foreign instrument provides a rapid and controllable deformation piezo electric element to drill carefully through the zona pellucida and enter a cell with minimal damage or deformation during transgenic cloning procedures. *Advice received from:* National Institutes of Health, December 11, 1998.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 99-1775 Filed 1-25-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Hawaii, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 98-058. *Applicant:* University of Hawaii, Honolulu, HI 96822. *Instrument:* Directional Wave Buoy. *Manufacturer:* Datavell bv, The Netherlands. *Intended Use:* See notice at 63 FR 65174, November 25, 1998. *Reasons:* The foreign instrument provides (1) capability for long-term deployment over deep water in the open ocean for measuring directional waves, (2) real time data access through telemetry to onshore locations and (3) compatibility with similar research projects in this area. *Advice received from:* Two domestic manufacturers of similar equipment, July 2, 1998.

Docket Number: 98-060. *Applicant:* Iowa State University of Science & Technology, Ames, IA 50011-3616. *Instrument:* Variable Temperature Scanning Tunneling Microscope. *Manufacturer:* Omicron Vakuum Physik, Germany. *Intended Use:* See notice at 63 FR 69264, December 16, 1998. *Reasons:* The foreign instrument provides (1) precise control of the temperature of the sample and the STM scanner over a range of 25° K to 750° K, (2) deposition of metal within the microscope and (3) continuous imaging of the sample during deposition. *Advice received from:* A domestic manufacturer of similar equipment, August 25, 1998.

Domestic manufacturers of similar equipment advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument (comparable cases).

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 99-1776 Filed 1-25-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010899C]

Marine Mammals; Scientific Research Permit (PHF393-1480-00)

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

ACTION: Issuance of Permit.

SUMMARY: Notice is hereby given that Ms. Deborah A. Glockner-Ferrari, 39 Woodvine Court, Covington, LA 70433, has been issued a permit to take North Pacific humpback whales (*Megaptera novaeangliae*), bottlenose dolphins (*Tursiops truncatus*), Hawaiian spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), false killer whales (*Pseudorca crassidens*), and pilot whales (*Globicephala macrorhynchus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Protected Species Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 9682-2396 (808/973-2987).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713-2289.

SUPPLEMENTARY INFORMATION: On December 4, 1998, notice was published in the Federal Register (63 FR 67045) that a request for a scientific research permit to take the above-references species had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations

Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217-227).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 19, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99-1767 Filed 1-25-99; 8:45 am]

BILLING CODE 3510-22-F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99-1]

Cadet Manufacturing Company; Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint in the matter of Cadet Manufacturing Company.

SUPPLEMENTARY INFORMATION: The text of the Complaint appears below.

Dated: January 21, 1999.

Sadye E. Dunn,

Secretary.

In the Matter of Cadet Manufacturing Company, 2500 W. Fourth Plain Boulevard, Vancouver, Washington 98660, a Domestic Corporation.

COMPLAINT

Nature of Proceedings

1. This is an administrative enforcement proceeding pursuant to section 15 of the Consumer Product Safety Act ("CPSA"), as amended, 15 U.S.C. 2064, for public notification and remedial action to protect the public from substantial risks of injury presented by certain electric in-wall heaters manufactured by Cadet

Manufacturing Company of Vancouver, Washington. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 CFR Part 1025.

Jurisdiction

2. This proceeding is instituted pursuant to the authority contained in sections 15(c), (d), and (f) of the CPSA, 15 U.S.C. 2064(c), (d), and (f).

Parties

3. Complaint Counsel is the staff of the Legal Division, Office of Compliance, Consumer Product Safety Commission, an independent federal regulatory commission established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Respondent Cadet Manufacturing Company ("Cadet") is a domestic corporation last organized and existing under the laws of the State of Washington, since 1993, with its principal place of business located at 2500 W. Fourth Plain Boulevard, Vancouver, Washington 98660.

5. Cadet manufactures electric heaters for use in or around a permanent or temporary household or residence; and is, therefore, a "manufacturer" of "consumer product[s]," as those terms are defined in sections 3(a) (1) and (4) of the CPSA, 15 U.S.C. 2052(a) (1) and (4).

Consumer Products

6. Since 1978, Cadet has manufactured and distributed in commerce electric in-wall heaters for use in homes and residences under the brand names "Cadet" and "Encore," all models and variants within each model of the series FW (models FW-051, FW-101, FW-122, FW-202, FW-202, and FW-751), manufactured between 1978 and 1989; series FX (Models FX-051, FX-052, FX-071, FX-072, FX-101, FX-102, FX-151, FX-122, FX-152, FX-202, and FX-242), manufactured between 1984 and 1995; series LX (models LX-242, LX-242, LX-302, LX-302, LX-402, LX-402, and LX-482), manufactured between 1984 and 1995; series TK (models TK-051, TK-071, TK-072, TK-101, TK-102, TK-151, and TK-152), manufactured between 1986 and 1998; series ZA (models ZA-051, ZA-052, ZA-071, ZA-072, ZA-101, ZA-102, ZA-122, ZA-151, ZA-152, ZA-202, ZA-242, manufactured between 1984 and 1995); first generation series Z (models Z-072, Z-101, Z-102, Z-152, Z-202, and Z-208), manufactured between 1993 and 1997; and/or all series and models of the same or functionally identical heaters

manufactured and distributed by Cadet under the Encore brand (hereinafter collectively, the "heaters"). Each of the heaters is, therefore, a "consumer product" "distributed in commerce" within the meaning of sections 3(a)(1) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), and (11), respectively.

7. Each of the heaters consists of a motor-driven fan, a heating element, and an over-temperature limit control switch ("OTC") housed in a metal box that is intended to be installed in a wall or under cabinets. The heater is connected to the main electric power supply in the home or residence. When energized with electric current, the fan of the heater pulls room air over the heating element, and pushes the heated air back into the room.

Product Defect

8. The heaters within series FW, FX, LX, TK, ZA, and/or the same or functionally identical Encore brand heaters, are defective because their design causes the heaters to overheat, fail, and catch fire; and/or allow lint, dirt, or debris within the heaters to catch fire. The heater design can also cause the heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the heaters creating a risk of electric shock.

9. The heaters within the series FW, FX, LX, TK, ZA heaters, and/or same or functionally identical Encore brand heaters, are defective because they were manufactured or assembled with inadequate or faulty components, electrical connections, and/or contacts, which cause the components, electrical connections, and/or contacts to fail, overheat, and catch fire; and/or allow lint, dirt, or debris within the heaters to catch fire. These defects can also cause the heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence.

10. The heaters within the first generation Z series, and/or the same or functionally identical Encore brand heaters are defective in design or manufacture because the heater element can overheat, explode, and spew molten metal particles into the living space of a home or residence.

Substantial Product Hazards and Risks of Injury

11. The design defects in the series FW, FX, LX, TK, ZA heaters, and/or the same or functionally identical Encore brand heaters, identified in paragraph 8 above are prevalent within those heaters.

12. The manufacturing or assembly defects in the series FW, FX, LX, TK, ZA heaters, and/or the same or functionally identical Encore brand heaters, identified in paragraph 9 above are prevalent within those heaters.

13. The design or manufacturing defects in the first generation series Z heaters, and/or the same or functionally identical Encore brand heaters, identified in paragraph 10 above are prevalent within those heaters.

14. The defects identified and described in paragraphs 8 through 10 above have caused or contributed to serious thermal burns and death, and are likely to cause serious electric shock injury and death.

15. The staff knows of at least 183 instances of electrical fire or malfunction involving the heaters: 85 units of series FX; 18 units of series FW; 2 units of series LX; 49 units of series ZA; 2 units of series TK; and 27 units of series Z (first generation); including 131 heaters that allegedly smoked, sparked, caught fire, emitted flame, and/or ejected burning particles or molten metal particles as the result of the defects identified and described in paragraphs 8 through 10 above. These incidents have resulted in three deaths and two burn injuries.

16. Between 1978 and 1998, Cadet manufactured approximately 1,800,000 potentially defective heaters that present the hazards and risks of injury described in paragraphs 14 and 15 above.

17. It is likely that the series FX, FW, LX, TK, first generation Z, ZA heaters, and/or the same or functionally identical Encore brand heaters, will continue to fail in the same way and to present the same hazards and risks of injury as a result of the defects described in paragraphs 8 through 10 above, if public notice and remedial actions are not taken to eliminate or reduce the risk of injury presented by the heaters. Each of the heaters, therefore, presents a "substantial product hazard" within the meaning of sections 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), by reason of the substantial risk of injury or death alleged in paragraphs 11 through 17 above.

Relief Sought

Complaint Counsel requests the Commission to issue the following relief.

A. Determine that the heaters present a substantial product hazard within the meaning of section 15(a)(2), 15 U.S.C. 2064(a)(2).

B. Determine that public notification under section 15(c) of the CPSA, 15 U.S.C. 2064(c), is required to protect the

public adequately from the risks of injury presented by the heaters.

C. Order Cadet, under section 15(c) of the CPSA, 15 U.S.C. 2064(c), to give such notice as is reasonably necessary to protect the public.

D. Order Cadet, under section 15(d) of the CPSA, 15 U.S.C. 2064(d), to cease manufacturing for sale, offering for sale, and distributing in commerce the defective heaters.

E. Order Cadet under section 15(d) of the CPSA, 15 U.S.C. 2064(d), to elect one of the following remedial actions:

1. Repair each heater in such a manner that it is free of defect and works in a proper and safe manner.

2. Replace each heater with a new heater, free of any defect, that works in a proper and safe manner.

3. Refund the purchase price of each heater, including the costs of materials, labor, and profit.

F. Order Cadet to submit a corrective action plan satisfactory to the Commission that requires Cadet to undertake public notice and remedial actions in accordance with paragraphs C, D, and E above, pursuant to section 15(d) of the CPSA, 15 U.S.C. 2064(d).

G. Order Cadet for a period of five (5) years after issuance of the Final Order in this matter, to notify the Commission at least sixty (60) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter.

H. Grant such other and further relief as the Commission may deem necessary.

Issued by Order of the Commission.

Dated: January 14, 1999.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207, Tel: (301) 504-0621, ext. 1349.

Eric L. Stone,

Director, Legal Division, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207, Tel: (301) 504-06261, ext. 1350.

Earl A. Gershenow,

Howard N. Tarnoff,

Trial Attorneys, Complaint Counsel, Legal Division, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207, Tel: (301) 504-9626, ext. 1343.

Hand Delivery Address: 4330 East West Highway, Room 613, Bethesda, Maryland 20814.

[FR Doc. 99-1779 Filed 1-25-99; 8:45 am]

BILLING CODE 6350-01-P

DEPARTMENT OF DEFENSE**Department of the Air Force****HQ USAF Scientific Advisory Board Meeting**

The Spectrum Management Study in support of the HQ USAF Scientific Advisory Board will meet in Rosslyn, VA on February 24–25, 1999 from 8:00 A.M. to 5:00 P.M.

The purpose of the meeting is to kick off the 1999 Quicklook Study on Spectrum Management.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison.

[FR Doc. 99–1667 Filed 1–25–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE**Department of the Army****Availability of Exclusive Licensing of U.S. Patent Nos. 5,806,741 for a Load Carrying System and 5,724,707 for an Interlock Attaching Strap System**

AGENCY: U.S. Army Soldier and Biological Chemical Command, Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1), announcement is made of prospective exclusive licenses for a load carrying system and an interlock attaching strap system described in U.S. Patent Nos. 5,806,741 and 5,724,707, respectively.

DATES: Written objections must be filed on or before 26 March 1999.

ADDRESSES: U.S. Army Soldier and Biological Chemical Command, Soldier Systems Center, Office of Counsel, Attn: Patent Counsel, 15 Kansas Street, Natick, MA 01760–5035.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent J. Ranucci, Patent Counsel at 508–233–4510.

SUPPLEMENTARY INFORMATION: The Load Carrying System was invented by Mr. John Kirk. The Interlock Attaching Strap System was invented by Messrs. John Kirk, Gerald Tatton and Paul Dersain. Rights in the invention are vested in the U.S. Government as represented by the Secretary of the Army at the U.S. Army Soldier and Biological Chemical

Command, Soldier Systems Center (SBCCOM). Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 92–502) and Section 207 of Title 35, U.S. Code, the Department of the Army, as represented by SBCCOM, intends to grant exclusive licenses on the load carrying system and an interlock attaching strap system to Speciality Defense Systems, a Division of Speciality Plastic Products, 530 Sherwood Avenue, Dunmore, PA 18512. Pursuant to 37 CFR 404.7(a)(1), any interested party may file written objections to the prospective license agreement. Written objections should be directed to the above address.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–1768 Filed 1–25–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION**President's Board of Advisors on Historically Black Colleges and Universities Meeting**

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: Thursday, February 4, 1999 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol Hotel located at 550 C Street, S.W., Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Treopia Washington, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, S.W., the Portals Building, Suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 12876 of November 1, 1993. The Board was established to advise on federal policies that impact upon Historically Black Colleges and

Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges.

The meeting of the Board is open to the public. The meeting will focus on review of federal agency program activity with historically black colleges and universities, and new initiatives from the Higher Education reauthorization Act.

Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1250 Maryland Avenue, S.W., the Portals building, Suite 605, Washington, DC, 20202, from the hours of 8:30 a.m. to 5:00 p.m.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–1688 Filed 1–25–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY**Idaho Operations Office****Office of Site Operations****National Analytical Management Program Notice 99–01**

AGENCY: Idaho operations office, Department of Energy (DOE).

ACTION: Notice of meetings open to the public.

SUMMARY: The National Analytical Management Program within the Office of Site Operations is announcing that the Environmental Protection Agency, Department of Energy, Department of Defense, Food and Drug Administration, National Institute of Standards and Technology, Nuclear Regulatory Commission, and U.S. Geological Survey are meeting to develop a joint interagency guidance manual for programs and laboratories to use when planning and implementing the analysis of environmental samples for radioactivity. The manual uses a performance based approach and will provide guidance to both project planners and laboratory personnel. The guidance is being developed as a draft document entitled the MultiAgency Radiation Laboratory Protocol (MARLAP) Manual, and it is anticipated that the final product will be a consensus document each agency can agree upon and adopt. Meetings of the group are open to the public on a first

come, space available basis with advance registration. The agenda for this meeting will be available on the appropriate INTERNET sites listed in the **SUPPLEMENTARY INFORMATION** section.

DATES: A meeting will be held on February 8, 9, 10, from 9:00 a.m. until 5:30 p.m. and on February 11 from 8:30 a.m. until 12:30 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology (NIST), Gaithersburg, MD, Building 245, Room C-301.

FOR FURTHER INFORMATION CONTACT:

Persons wishing to attend this meeting should contact Kenneth Inn at 301-975-5541 to register. Persons needing further information concerning this group and the work of developing the MultiAgency Radiation Laboratory Protocols Manual should contact Stan Morton, U.S. Department of Energy/National Analytical Management Program, 850 Energy Drive, Idaho Falls, Idaho, 83402, (208) 526-2186.

SUPPLEMENTARY INFORMATION: The schedule, location, and registration information for future meetings will be posted at the following INTERNET sites: EPA, <http://www.epa.gov/radiation/marlap> DOE/EM, <http://www.em.doe.gov/namp> DOE/EH, <http://tis.eh.doe.gov/oepa> NRC, <http://www.nrc.gov/NRC/PUBLIC/meet.html#OTHER>

Issued in Washington, DC on January 14, 1999.

John S. Morton,

Director, National Analytical Management Program.

[FR Doc. 99-1721 Filed 1-25-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-146-000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

January 20, 1999.

Take notice that on January 11, 1999, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP99-146-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate under the provisions of Section 7(c) of the Natural Gas Act (NGA) an interconnection between ANR and Brownsville Power I, LLC

(Brownsville), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR's proposed interconnection will be located at its 30-inch main line and 30-inch loop line in Haywood County, Tennessee and will allow deliveries of natural gas to Brownsville's proposed power plant in Haywood County, Tennessee. ANR's proposed interconnection will consist of two 12-inch hot taps, one each on ANR's 30-inch main line and 30-inch loop line; one 10-inch ultrasonic meter assembly and one 4-inch turbine meter assembly; an electronic measurement system; one air-conditioned 10 foot by 10 foot building suitable for flow computer equipment; instrumentation to monitor flow or pressure; and approximately 1,000 feet of 12-inch piping. The maximum daily volume of the proposed interconnection will be 83.0 Mmcfd. The total cost of ANR's facilities will be approximately \$740,000, which will be fully reimbursed by Brownsville.

ANR states that the construction of the proposed interconnection facilities will have no effect on its peak day and annual deliveries, that its existing tariff does not prohibit additional interconnections, that deliveries will be accomplished without detriment or disadvantage to its other customers and that the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99-1673 Filed 1-25-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-158-001]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

January 20, 1999.

Take notice that on January 15, 1999, Discovery Gas Transmission LLC (Discovery) tendered the following tariff sheets for filing as part of its FERC Gas Tariff, Original Volume No. 1, with an effective date of January 1, 1999:

Second Revised Sheet No. 127
Second Revised Sheet No. 128
Second Revised Sheet No. 133
Second Revised Sheet No. 169
Original Sheet No. 169A
Original Sheet No. 252

Discovery states that the purpose of the filing is to clarify its right of first refusal procedures and its capacity allocation procedures with respect to negotiated rates in order to comply with the Commission's December 30, 1998, letter order in the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99-1676 Filed 1-25-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99-5-23-000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes FERC Gas Tariff

January 20, 1999.

Take notice that on January 14, 1999 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised

Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of February 1, 1999.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99-1679 Filed 1-25-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No ER99-637-000]

Koch Power Louisiana, L.L.C.; Notice of Issuance of Order

January 20, 1999.

Koch Power Louisiana L.L.C. (KPL) a Delaware corporation created to develop, own and operate a 200 MW electric generating facility in Sterling, Louisiana, filed an application requesting that the Commission authorize it to sell power at market-based rates, and for certain waivers and authorizations. In particular, KPL requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuance of securities and assumptions

of liabilities by KPL. On January 14, 1999, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceedings.

The Commission's January 14, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraph (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by KPL should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, KPL is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of KPL, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of KPL's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 16, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 99-1674 Filed 1-25-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-669-000]

SEI Wisconsin, L.L.C.; Notice of Issuance of Order

January 20, 1999.

SEI Wisconsin, L.L.C. (SEI Wisconsin), an affiliate of the Southern Company, filed an application for

Commission authorization to engage in wholesale power sales at market-based rates in connection with both the construction, ownership and operation of generation and incidental transmission assets as well as the sale of power procured from other sources; these sales will be largely pursuant to a Power Purchase Agreement entered into between SEI Wisconsin and Wisconsin Electric Power Company. SEI Wisconsin also requested waiver of various Commission regulations. In particular, SEI Wisconsin requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuance so securities and assumptions of liability by SEI Wisconsin.

The Commission's January 14, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by SEI Wisconsin should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(G) Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, SEI Wisconsin is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of SEI Wisconsin, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of SEI Wisconsin's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 16, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 99-1675 Filed 1-25-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP99-166-001]

**Stingray Pipeline Company; Notice of
Compliance Filing**

January 20, 1999.

Take notice that on January 14, 1999, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective January 1, 1999.

Stingray states that the purpose of the filing is to comply with the Commission's order issued December 30, 1998 in Docket No. RP99-166-000 (December 30th Order, which required Stingray to make various revisions to tariff sheets submitted to part of Stingray's rate case filed on December 1, 1998 in Docket No. RP99-166-000.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective January 1, 1999, pursuant to the December 30th Order.

Stingray states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties set out on the official service left in Docket No. RP99-166.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,*Secretary.*

[FR Doc. 99-1677 Filed 1-25-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP99-174-003]

**Williams Gas Pipeline Central, Inc.;
Notice of Proposed Changes in FERC
Gas Tariff**

January 20, 1999.

Take notice that on January 14, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Effective January 1, 1999

First Revised Third Revised Sheet No. 6
First Revised Sixth Revised Sheet No. 6A
Second Substitute Second Revised Sheet No. 38
Second Substitute First Revised Sheet No. 39

Effective February 1, 1999

Substitute Fourth Revised Sheet No. 6
Substitute Seventh Revised Sheet No. 6A

Williams states that on December 1, 1998, as revised December 11, 1998 and December 18, 1998, it made a filing to recover through an alternative mechanism any GSR costs not recovered through the mechanism set forth in Article 14.2 of its tariff. By order issued December 30, 1998, the Commission approved the recovery of these costs, but directed Williams to file a reservation surcharge recovery mechanism. The instant filing is being made in compliance with the order.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,*Secretary.*

[FR Doc. 99-1678 Filed 1-25-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. CP92-741-001]

**Williston Basin Interstate Pipeline
Company; Notice of Application for
Amended Section 3 Authorization and
Request for a Presidential Permit**

January 20, 1999.

Take notice that on January 8, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP92-741-001 an application pursuant to Section 3 of the Natural Gas Act (NGA), as amended, and Subpart B of Part 153 of the Commission's Regulations thereunder, for an order amending previous authorization and Presidential Permit for the construction, operation, and maintenance of natural gas pipeline facilities in Burke County, North Dakota, for the import and export of up to 10,000 Mcf per day of natural gas at the International Boundary between the United States and Canada,¹ all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin's application states its request to amend the Presidential Permit and its authorization under Section 3 of the Natural Gas Act in order to increase the maximum daily import and/or export quantity from 10,000 Mcf per day to 28,100 Mcf per day from or to the TransGas Limited Pipeline system in Canada. The border-crossing facilities have a capacity of 40,000 Mcf per day at its maximum allowable operating pressure of 700 psia, as indicated in Williston Basin's FERC Gas Tariff Sheet No. 775.

Williston Basin avers that the 28,100 Mcf per day represents the line section capacity of the Portal-Tioga Line Section No. 25 as reflected on Williston Basin's Electronic Bulletin Board. Williston Basin further states that transportation services in the United States associated with these increased quantities will be performed and provided under Rate Schedules FT-1 and/or IT-1 of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 10, 1999, file with the Federal Energy Regulatory Commission, 888

¹ The original authorization and Presidential Permit were granted in Docket No. CP92-741-000, Williston Basin Interstate Pipeline Company, 63 FERC ¶61,179, (1993).

First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own reviewed of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99-1672 Filed 1-25-99; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6224-1]

Delegation of Authority of National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Source Categories; Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: The purpose of this notice is to announce that on April 20, 1998, EPA granted the Commonwealth of Virginia's request for partial delegation of the National Emission Standards for Hazardous Air Pollutants (NESHAPS), and associated infrastructure programs.

Virginia's request for partial delegation of authority only pertains to affected sources of hazardous air pollutants (HAPs) for all source categories which are located at major sources. EPA granted the delegation with certain restrictions. The restrictions involve EPA's retention of certain authorities including: implementation and enforcement of standards that control radionuclides or that apply to an area source which is not located at a major source, implementation and enforcement of an accidental release program, approvals of alternative means of limiting emissions, alternative control technologies, alternative test methods, alternative monitoring methods, and the authority to make certain applicability determinations. In addition, certain provisions will be delegated only on a case-by-case basis and require notification by the Virginia Department of Environmental Quality (VADEQ) to EPA. These provisions include: approvals of compliance extensions, site-specific test plans, performance evaluation plans; approvals of minor alternatives to test methods, monitoring, and shorter sampling times/volumes; and waivers of performance testing. On July 10, 1998, final guidance was issued in a Memorandum from the Office of Air Quality Planning and Standards (OAQPS) to the Regions regarding delegation of authorities to state and local air pollution control agencies. This memorandum identified authorities which may not be delegated to states, and included the waiver of recordkeeping. This authority, which was delegated to Virginia as part of the April 20, 1998 delegation of authority, was subsequently revoked in the EPA letter of November 19, 1998 to VADEQ.

EFFECTIVE DATES: The effective date of the delegation authority is April 20, 1998.

ADDRESSES: Copies of EPA's letter of delegation are available for public inspection at EPA's Region III Office, 1650 Arch Street, Philadelphia, PA 19103 and the VADEQ regional offices and satellite offices during normal business hours. The addresses of these offices are provided below. Effective immediately, all notifications, requests, applications, reports and other correspondence required pursuant to 40 CFR part 63 for major sources, as defined in 40 CFR Part 70, to be sent to the Administrator should be submitted to the EPA Region III office and, with respect to sources located in listed counties and cities, to the VADEQ Air Permit Manager at the following addresses:

Southwest Regional Office—
Department of Environmental Quality,
355 Deadmore St., P.O. Box 1688,
Abingdon, Virginia 24212-1688, Tel.
(540) 676-4800. Includes counties of
Bland, Buchanan, Carroll, Dickenson,
Grayson, Lee, Russell, Scott, Smyth,
Tazewell, Washington, Wise, Wythe and
the cities of Bristol, Galax, and Norton.

West Central Regional Office—
Department of Environmental Quality,
3019 Peters Creek Road, Roanoke,
Virginia 24019, Tel. (540) 562-6700.
Includes the counties of Allegheny,
Botetourt, Craig, Floyd, Franklin, Giles,
Montgomery, Patrick, Pulaski, Roanoke
and the cities of Clifton Forge,
Covington, Radford, Roanoke, and
Salem.

Lynchburg Satellite Office—
Department of Environmental Quality,
7705 Timberlake Road, Lynchburg,
Virginia 24502, Tel. (804) 582-5120.
Includes the counties of Amelia,
Amherst, Appomattox, Bedford,
Brunswick, Buckingham, Campbell,
Charlotte, Cumberland, Halifax, Henry,
Lunenburg, Mecklenburg, Nottoway,
Pittsylvania, and Prince Edward and the
cities of Bedford, Danville, Lynchburg,
Martinsville, and South Boston.

*Valley Regional Office—*Department
of Environmental Quality, 4411 Early
Road, P.O. Box 1129, Harrisonburg,
Virginia 22801, Tel. (540) 574-7800.
Includes the counties of Augusta, Bath,
Clarke, Frederick, Highland, Page,
Rockbridge, Rockingham, Shenandoah,
and Warren, and the cities of Buena
Vista, Harrisonburg, Lexington,
Staunton, Waynesboro, and Winchester.

Fredericksburg Satellite Office—
Department of Environmental Quality,
300 Central Road, Suite B,
Fredericksburg, Virginia 22401, Tel.
(540) 899-4600. Includes the counties of
Albemarle, Caroline, Culpeper, Essex,
Fauquier, Fluvanna, Gloucester, Greene,
King and Queen, King George, King
William, Lancaster, Louisa, Madison,
Mathews, Middlesex, Nelson,
Northumberland, Orange,
Rappahannock, Richmond,
Spotsylvania, Stafford, and
Westmoreland, and the cities of
Charlottesville, and Fredericksburg.

Northern Regional Office—
Department of Environmental Quality,
13901 Crown Court, Woodbridge,
Virginia 22193, Tel. (703) 583-3800.
Includes the counties of Arlington,
Fairfax, Loudoun and Prince William,
and the cities of Alexandria, Fairfax,
Falls Church, Manassas, and Manassas
Park.

Piedmont Regional Office—
Department of Environmental Quality,
4949-A Cox Road, Glen Allen, Virginia
23060-6295, Tel. (804) 527-5020.

Includes the counties of Charles City, Chesterfield, Dinwiddie, Goochland, Greensville, Hanover, Henrico, New Kent, Powhatan, Prince George, Surry, and Sussex and the cities of Colonial Heights, Emporia, Hopewell, Petersburg, and Richmond.

Tidewater Regional Office—

Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia 23462, Tel. (757) 518-2000. Includes the counties of Accomac, Isle of Wight, James City, Northampton, Southampton, and York and the cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

FOR FURTHER INFORMATION CONTACT:

Marilyn Powers, Permits and Technical Assessment Section (3AP11), Air Protection Division, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Telephone: 215-814-2308.

SUPPLEMENTARY INFORMATION: Section 112(l) of the Clean Air Act, as amended November 15, 1990, and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of emission standards of hazardous air pollutants.

Virginia initiated the request for delegation of 40 CFR Part 63 in its initial letter, dated November 12, 1993, from the Virginia Department of Environmental Quality (VADEQ) Director seeking approval of its Title V program. In this letter, Virginia requested that EPA grant Virginia "delegation of authority upon approval of the operating permit program, except Section 112(r), prevention of accidental releases." Virginia's request for partial delegation of authority only includes affected sources of hazardous air pollutants (HAPs), as defined in 40 CFR part 63, for all source categories which are located at major sources, as defined in 40 CFR part 70. On February 6, 1998, the Virginia Department of Environmental Quality (VADEQ) forwarded to the EPA regulatory revisions adopted by the State Air Pollution Control Board to confer to VADEQ the authority to implement and enforce existing National Emission Standards for Hazardous Air Pollutants (NESHAPs) and associated infrastructure programs, pursuant to Section 112 of the Clean Air Act (CAA), as set forth in 40 CFR part 63. This letter also requested that automatic delegation be granted to Virginia for all future NESHAPs.

On July 10, 1997, EPA approved VADEQ's Title V Operating Permits

Program (see 62 FR 31516 dated June 10, 1997). Requirements for approval, specified in 40 CFR 70.4(b), encompass CAA section 112(l)(5) requirements for approval of a program for delegation of CAA section 112 standards as promulgated by EPA as they apply to 40 CFR part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation and an expeditious compliance schedule for enforcing standards, which are also requirements under 40 CFR part 70. Therefore, as part of the Title V Operating Permits Program approval, EPA also promulgated full approval under CAA section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of the CAA section 112 standards that are unchanged from Federal standards as promulgated in 40 CFR part 63. This program for delegation only applies to sources covered by the 40 CFR part 70 program. The specific authority and commitments for Section 112 implementation is contained in detail in EPA's proposed interim approval of Virginia's Title V program (62 FR 12778 dated March 18, 1997). Today's notice serves to inform of the specific authorities which have been delegated to Virginia.

On April 20, 1998, the Environmental Protection Agency granted Virginia's request for partial delegation with certain restrictions. The following authorities will be retained by EPA Region III:

(1) implementation and enforcement of standards that control radionuclides (40 CFR part 63.12(b)(1));

(2) implementation and enforcement of standards that apply to an area source, as defined in 40 CFR part 63.2, which is not located at a major source, as defined in 40 CFR part 70;

(3) implementation and enforcement of an accidental release program, as defined in CAA section 112(r) and 40 CFR part 68;

(4) approval of alternative means of emission limitations and alternative control technologies;

(5) approval of alternative test methods;

(6) approval of alternative monitoring methods; and

(7) the authority to make certain applicability determinations, as required by formal requests from owners or operators of facilities or the public.

In addition, certain provisions of 40 CFR part 63 are delegated on a case-by-case basis to VADEQ and require VADEQ to notify US EPA Region III, in writing. These provisions include:

(1) compliance extensions;

(2) approval of site-specific test and performance evaluation plans;

(3) approval of minor alternatives to test methods and monitoring;

(4) approval of shorter sampling times/ volumes; and

(5) waiver of performance testing.

On July 10, 1998, final guidance was issued in a Memorandum from the OAQPS to the Regions regarding delegation of authorities to state and local air pollution control agencies. In this Memorandum, specific authorities were identified which could result in a "change to the stringency of the underlying standard, which are likely to be nationally significant, or which may require a rulemaking". Included as an authority which may not be delegated is the waiver of recordkeeping. This authority, which had been delegated to Virginia in EPA's letter of delegation of April 20, 1998, was subsequently revoked in the EPA letter of November 19, 1998. As of April 20, 1998, VADEQ has primary authority to enforce the standards in 40 CFR part 63 for CAA part 70 sources, however, EPA will retain independent enforcement authority.

Virginia has adopted by reference all existing NESHAPs and the corresponding amendments and revisions into 9 VAC 5-60-90 with only the wording changes provided by present state regulations. All future 40 CFR part 63 NESHAPs are automatically delegated, however, this delegation is conditioned upon each standard being legally adopted by the VADEQ and must be adopted by reference to the Federal regulations with only those wording changes provided by the present state regulations, and VADEQ must notify EPA Region III that it has adopted additional standards and that it intends to enforce the standards in conformance with the terms of this delegation.

If the Administrator determines that Virginia cannot adequately implement or enforce the requirements of 40 CFR part 63, this delegation may be revoked in whole or in part.

EPA hereby notifies the public that it has partially delegated the authority for implementation and enforcement of the NESHAPs for Source Categories, pursuant to CFR part 63, as outlined above, to the Virginia Department of Environmental Quality.

The Office of Management and Budget has exempted this notice informing the public of partial delegation of NESHAPs to VADEQ, as outlined above, from Executive Order 12866 review. This action is exempt from CRA review.

This notice is issued under the authority of sections 101, 110, 112 and

301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7412, 7601).

Dated: December 15, 1998.

W. Michael McCabe,

Regional Administrator, EPA Region III.

[FR Doc. 99-1759 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6223-7]

EPA Identification of Additional Waters To Be Added to Virginia's 1998 Clean Water Act Section 303(d) List of Impaired Waters, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of hearings and availability for public comment, rescheduled hearings.

SUMMARY: The Environmental Protection Agency (EPA) is providing public notice of the availability of its December 16, 1998 identification of additional waters to be added to Virginia's 1998 Clean Water Act section 303(d) list and is inviting public comment on that identification. EPA is also providing notice of two public hearings. EPA intends to make a final determination 45 days after the close of this public comment period regarding the waters to be added to Virginia's 1998 303(d) list. EPA will transmit the listing of any additional waters to Virginia to incorporate into the current approved list of waters.

Section 303(d) of the Clean Water Act and the implementing regulations at 40 CFR 130.7 require states to identify their waters that do not, or will not, meet water quality standards even after required technology-based or other controls are in place. This list, known as the Section 303(d) list, must be submitted to EPA for approval.

Federal regulations require states to consider all existing and readily available water quality-related data and information in developing the 303(d) list. EPA determined that the Commonwealth of Virginia did not fully meet this requirement. The Agency partially approved and partially disapproved Virginia's 303(d) list on November 16, 1998. On December 16, 1998, EPA identified a number of waters to be added to Virginia's 303(d) list based on existing and readily available water quality-related data and information.

DATES: Comments must be received on or before March 15, 1999. The two public hearings will be held

Wednesday, March 10, 1999, 7:00 p.m. to 9:30 p.m., Richmond, VA., and Thursday, March 11, 1999, 7:00 p.m. to 9:30 p.m., Roanoke, VA. These hearings have been rescheduled from the dates originally announced in the **Federal Register** on December 30, 1998. If you would like to testify at one or both of the public hearings, please register with Ms. Lenka Berlin at the phone number below by March 5, 1999.

ADDRESSES: Submit comments to Ms. Lenka Berlin (3WP13), Water Protection Division, USEPA Region III, 1650 Arch Street, Philadelphia, PA 19103. The March 10, 1999 public hearing will be at the Division of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220. The March 11, 1999 public hearing will be at the Roanoke County Administration Center, 5204 Bernard Drive, Roanoke, VA 24018.

FOR FURTHER INFORMATION CONTACT: For a copy of the document detailing EPA's November 16, 1998 partial disapproval and a list of the waters EPA has identified to be added to Virginia's list, contact Ms. Lenka Berlin by phone (215-814-5259), fax (215-814-2301), mail to the address shown above, or e-mail (berlin.lenka@epamail.epa.gov). For a copy of Virginia's final Section 303(d) list submittal, contact Mr. Charles Martin, Virginia Department of Environmental Quality, at (804) 698-4462.

SUPPLEMENTARY INFORMATION:

What Is Required of the Section 303(d) List?

Federal regulations include two requirements that are most pertinent to EPA's partial disapproval of Virginia's 1998 Section 303(d) list. First, the regulations require that states consider all existing and readily available water quality-related data and information in identifying waters for the 303(d) list. See 40 CFR 130.7(b)(5). Second if EPA disapproves a list, the Agency must identify the waters to which the disapproval applies. See 40 CFR 130.7(d)(2).

What Did Virginia's 303(d) List Include?

EPA received Virginia's final 1998 Section 303(d) report on October 16, 1998. The report included five parts plus appendices. Parts I and II of the report are the impaired waters that the Commonwealth determined require total maximum daily load (TMDL) calculations. EPA considers Parts I and II to be the Commonwealth's Section 303(d) list. Parts III, IV and V are waters of concern that the Commonwealth determined do not require TMDLS. EPA

considers these three parts to be for informational purposes only, separate from the Section 303(d) list. Among the appendices to the submission is Appendix D, which lists the waters which the Commonwealth included on its 1996 Section 303(d) list but did not include on its 1998 list. Virginia explained that it did not include these waters because point sources on these waters had reportedly been issued water quality-based effluent limits that would eliminate the impairment within the next two-year reporting cycle.

Why Did EPA Partially Disapprove Virginia's 1998 Section 303(d) List?

In reviewing the list, EPA determined that Virginia had omitted certain waters from the list even through existing and readily available water quality-related data and information show that these waters do not meet water quality standards even after required technology-based and other controls are applied. On November 16, 1998 EPA disapproved on the omission of these waters from the list and on December 16, 1998, EPA identified the waters to be added to the list.

Which Waters Did EPA Identify To B

On December 16, 1998 EPA identified the following five groups of waters to be added to Virginia's 1998 303(d) list:

1. Portions of the main channel of the Chesapeake Bay and three tidal tributaries because existing and readily available water quality-related data and information show that the water quality standards for dissolved oxygen are not being met. EPA identified those portions of the main channel of the Chesapeake Bay and three tidal tributaries as high priority for TMDL development. In addition, EPA identified excessive nutrients as the pollutants of concern causing violations of the applicable water quality standard for dissolved oxygen.

2. 77 waters presented in Appendix D of Virginia's report (waters that were listed in 1996 as needing TMDLS but were not included on the 1998 list). The only data the Commonwealth provided to EPA (i.e., data submitted with the 1996 Section 303(d) list) indicated that these segments are impaired. EPA designated these waters as low priority for TMDL development.

3. 47 waters presented in Part V of Virginia's report (waters reportedly impaired by natural conditions and not identified as requiring TMDL development) because they fail to meet water quality standards. EPA designated these waters as low priority for TMDL development.

4. 10 waters that were identified as impaired (not meeting water quality standards or designated uses) in the Commonwealth's 1998 Section 305(b) report but were not included by Virginia on the Section 303(d) list.

5. 6 waters that already are listed for one or more pollutants but, based on information from the Commonwealth's 1998 Section 306(b) report, should be listed for an additional pollutant.

In addition to identifying the five groups of waters above, EPA recommends that the Commonwealth modify the priority rankings, from medium to high, for four waters identified by the U.S. Fish and Wildlife Service as adversely impacting endangered species.

Dated: January 14, 1999.

James Burke,

Acting Water Protection Division, Region III.

[FR Doc. 99-1652 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6224-3]

Science Advisory Board; Emergency Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Wet Weather Flows and Urban Infrastructure Subcommittee of the Science Advisory Board's (SAB) Environmental Engineering Committee will meet by conference call Wednesday February 10, 1999 from 9:00 to 11:00 a.m. Eastern Standard Time (EST). The EEC was briefed on this topic at their December 1-3, 1998 public meeting (See 63 FR 63925-63926, November 17, 1998) and assigned the review to the Subcommittee.

The purpose of this conference call is to allow the individual Subcommittee members to present and discuss their preliminary findings based on their review of written materials, to identify areas where further information is needed, and, if possible, obtain that information from Agency staff. The Subcommittee will meet face-to-face February 25-26, 1999 to develop consensus findings and recommendations for its report; the face-to-face meeting will be the subject of a separate **Federal Register** Notice.

Members of the public wishing to obtain the review documents, attend the conference call meeting, or provide comments to the Subcommittee should contact Kathleen Conway, Designated

Federal Officer by 4:00 p.m. EST on Monday February 8. (TEL: 202 260 2558, FAX 202 260 7118, Email conway.kathleen@epa.gov) The Subcommittee will accept only written comments for the conference call; the February 25-26 meeting will provide opportunities for both oral and written comment.

Individuals requiring special accommodation should contact Ms. Conway by noon Thursday, February 4 so that appropriate arrangements can be made.

Dated: January 20, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99-1718 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-400138; FRL-6058-5]

Persistent Bioaccumulative Toxic Chemicals; Toxic Chemical Release Reporting; Emergency Planning and Community Right-to-Know; Multimedia Strategy for Persistent Bioaccumulative Toxic Pollutants; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: EPA will hold three public meetings to obtain public comment on two specific draft documents developed as part of the Agency's Persistent Bioaccumulative Toxic (PBT) Pollutant strategy. The two draft documents are "A Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants" and "EPA Action Plan For Mercury." EPA will also hold three public meetings to obtain public comment on the Agency's proposal and options: (1) To add certain PBT chemicals to the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 section 313 list of toxic chemicals and (2) to lower reporting thresholds for certain PBT chemicals subject to EPCRA section 313 and section 6607 of the Pollution Prevention Act (PPA). The Agency is also requesting comment on the persistence and bioaccumulation criteria presented in the proposed rule.

DATES: The first meeting on EPA's PBT pollutant strategy will take place in Washington, DC on February 16, 1999, at 9 a.m. and adjourn by noon. The second meeting on EPA's PBT pollutant strategy will take place in Chicago, IL on February 23, 1999, at 9 a.m. and adjourn

at noon. The third meeting on EPA's PBT pollutant strategy will take place in San Francisco, CA on March 5, 1999, at 9 a.m. and adjourn at noon.

The first meeting on the EPCRA section 313/PPA section 6607 proposed rulemaking will take place in Washington, DC on February 16, 1999, at 1 p.m. and adjourn by 4 p.m. The second meeting on the EPCRA section 313/PPA section 6607 proposed rulemaking will take place in Chicago, IL on February 23, 1999, at 1 p.m. and adjourn at 4 p.m. The third meeting on the EPCRA section 313/PPA section 6607 proposed rulemaking will take place in San Francisco, CA on March 5, 1999, at 1 p.m. and adjourn at 4 p.m.

ADDRESSES: The meetings in Washington, DC will be held at the Environmental Protection Agency, Auditorium, Education Center, 401 M St., SW., Washington, DC. The meetings in Chicago, IL will be held at the Environmental Protection Agency, Room 328, 77 West Jackson Boulevard, Chicago, IL. The meetings in San Francisco will be held at the Environmental Protection Agency, California Room, 75 Hawthorne St., San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: To sign up to speak at the meeting contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672. For further information on the EPCRA section 313/PPA section 6607 proposed rulemaking contact Daniel R. Bushman, 202-260-3882, e-mail: bushman.daniel@epamail.epa.gov. For further information on the Agency's PBT pollutant strategy, contact Sam Sasnett, 202-260-8020, e-mail: sasnett.sam@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. EPA's Persistent Bioaccumulative Toxic (PBT) Pollutants Strategy

In the **Federal Register** of November 17, 1998 (63 FR 63926) (FRL-6045-2), EPA published a Notice announcing the availability of a draft strategy for affecting reductions in the releases and exposures to persistent, bioaccumulative toxic (PBT) pollutants, including a specific draft action plan for mercury. That notice requested the submission of written comments by February 16, 1999.

II. EPCRA Section 313/PPA Section 6607 Proposed Rulemaking

In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA). In 1990, Congress passed the Pollution Prevention Act. Section 313 of EPCRA and section 6607 of PPA require certain businesses to submit reports each year on the amounts of toxic chemicals their facilities release and otherwise manage as waste. The purpose of these requirements is to inform the public, government officials, and industry about releases and other quantities managed as waste in their communities.

Currently, the EPCRA section 313 reporting thresholds are 25,000 pounds for the "manufacture" or "processing" of a toxic chemical and 10,000 pounds for the "otherwise use" of a toxic chemical. On January 5, 1999 (64 FR 688) (FRL-6032-3), EPA proposed: (1) To lower the reporting thresholds for certain PBT chemicals that are subject to EPCRA section 313 and PPA section 6607; (2) to lower the reporting thresholds for dioxin and dioxin-like compounds, which were previously proposed for addition to the EPCRA section 313 list of toxic chemicals; and (3) to add certain PBT chemicals to the EPCRA section 313 list of toxic chemicals. The Agency also presented persistence and bioaccumulation criteria in the proposed rule. These public meetings are being scheduled in order to provide a forum for dialog to be shared by EPA, potentially affected industry groups, and the public about the basis of EPA's proposed action, options provided, and potential impacts and benefits.

III. Notice of Public Meeting

This Notice announces the Agency's intention to hold six public meetings to receive comments on both the PBT Strategy (including the Mercury Action Plan) and the EPCRA section 313 proposed rule. EPA planned these public meetings to cover these related actions because it believes that the same individuals are likely to want to comment on both. Therefore the public meetings have been scheduled such that comment on the PBT Strategy may be provided in the morning and comment on the EPCRA section 313 proposed rule may be provided in the afternoon. Oral statements will be scheduled on a first-come first-serve basis by calling the Emergency Planning and Community Right-to-Know Hotline at the numbers listed under FOR FURTHER INFORMATION CONTACT. All statements will be part of the public record.

List of Subjects

Environmental protection,
Community right-to-know.

Dated: January 19, 1999.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99-1749 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6224-4]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposal of CERCLA section 122(h)(1) administrative cost recovery settlement for the Uniroyal Hill Street Site.

SUMMARY: The United States Environmental Protection Agency ("U.S. EPA") proposes to address the potential liability of the Uniroyal Technology Corporation (the "Settling Party") by execution of a Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") section 122(h)(1) Administrative Order on Consent prepared pursuant to 42 U.S.C. 9622(h)(1) (the "Agreement"). The Agreement provides the Settling Party certain covenants not to sue under CERCLA, 42 U.S.C. 9601 *et seq.*, as amended, and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, as amended, with respect to the Uniroyal Hill Street Site (the "Site"), located in Mishawaka, Indiana. The key terms and conditions of the Agreement may be briefly summarized as follows: (1) The Settling Party agrees to pay \$525,000 to the Hazardous Substances Superfund in satisfaction of U.S. EPA's allowed general unsecured claim of \$1,750,000; (2) the Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or the Agreement; (3) Subject to the reservations specified in the Agreement, U.S. EPA affords the Settling Party a covenant not to sue for recovery of response costs pursuant to section 107 of CERCLA, 42 U.S.C. 9607(a), liability for injunctive relief or administrative order enforcement pursuant to section 106 of CERCLA, 42 U.S.C. 9606, liability for injunctive relief pursuant to section

7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, and contribution protection as provided by CERCLA sections 113(f)(2) and 122(h)(4), 42 U.S.C. 9613(f)(2) and 9622(h)(4), conditioned upon satisfaction of obligations under the Agreement. The Site is not on the NPL. The Agreement was signed by the Acting Regional Administrator, U.S. EPA, Region 5, on January 12, 1999.

DATES: Written comments on the proposed Agreement must be received by February 25, 1999.

ADDRESSES: The proposed Agreement and the U.S. EPA's response to any comments received will be available for public inspection at U.S. EPA Records Center Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed Agreement may be obtained from U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should reference the Uniroyal Hill Street Site, Mishawaka, Indiana, and U.S. EPA Docket No. V-W-99-C-526 and should be addressed to Ms. Hedi Bogda-Cleveland, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

FOR FURTHER INFORMATION CONTACT: Ms. Hedi Bogda-Cleveland, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-5825.

Dated: January 12, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99-1758 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6224-5]

Notice of Environmental Assessment on the Proposed Reissuance of General Permits for Concentrated Animal Feeding Operations in New Mexico, Oklahoma, and Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment on environmental assessment and finding of no significant impact.

SUMMARY: The Regional Administrator of EPA Region 6 has preliminarily determined that reissuance of National Pollutant Discharge Elimination System (NPDES) general permits authorizing discharges from concentrated animal feeding operations (CAFOs) in Texas (TXG800000, TXG810000), Oklahoma

(OKG800000, OKG810000), and New Mexico (NMG800000, NMG810000) will not significantly affect the quality of the human environment and that preparation of an environmental impact statement for further evaluation of that action is thus unnecessary. The environmental assessment (EA) supporting that preliminary determination describes the EPA's currently preferred alternatives, which differ in some instances from alternatives previously described in the notice proposing these permit actions. Interested Federal, State and local agencies, environmental groups, and individuals are invited to submit written comments on the preliminary determination and on the EA.

DATES: Written comments on EPA's finding of no significant impact (FONSI) or the EA may be submitted to the address below on or before February 25, 1999.

ADDRESSES: Copies of the FONSI and supporting environmental assessment (EA) may be obtained from Robert D. Lawrence, Acting Associate Director, Compliance Assurance and Enforcement Division (6EN-XP), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733;

Telephone (214) 665-2258. Written comments should be submitted to Mr. Lawrence at the same address.

The FONSI and EA are also available on the internet at the following website address: <http://www.epa.gov/region6/water/npdes/genpermt>

FOR FURTHER INFORMATION CONTACT: For further information on this matter, please write or call Mr. Lawrence at the above address and telephone number.

SUPPLEMENTARY INFORMATION: EPA Region 6 proposed to reissue NPDES permits authorizing discharges from CAFOs in Texas, Oklahoma, and New Mexico at 63 FR 34874 (June 26, 1998). On September 11, 1998, the Agency reopened the comment period to solicit additional comments on a number of specific issues. See 63 FR 48731. EPA is still considering numerous comments it received on the proposed permits.

The Agency has prepared an EA to assist it in determining whether the proposed permit action may significantly affect the quality of the human environment and thus require preparation of an environmental impact statement pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969. In some areas, the EA describes EPA's currently preferred

alternatives, which differ somewhat from alternatives described in its June 26, 1998, proposal. The public is also welcome to comment on this revised thinking/analysis. EPA will make no final decision on the FONSI or proposed permits until it considers all timely comments it receives.

Samuel J. Coleman,

Director, Compliance Assurance and Enforcement Division (6EN), Region 6.

[FR Doc. 99-1755 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

January 21, 1999.

FCC To Hold Open Commission Meeting Thursday, January 28, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 28, 1999, which is scheduled to commence at 9:30 a.m. in room TW-C305, at 445 12th Street, SW., Washington, DC.

Item no.	Bureau	Subject
1	Common Carrier	Title: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (CC Docket No. 98-146). Summary: The Commission will consider whether advanced telecommunications capability are becoming available to all Americans, including schools and classrooms, in a reasonable and timely fashion (CC Docket No. 98-146).
2	Common Carrier	Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147); and Request by Bell Atlantic-West Virginia for Interim Relief Under Section 706 or, in the Alternative, a LATA Boundary Modification (NSD-L-98-99). Summary: The Commission will consider action concerning the availability and deployment of advanced services.
3	Common Carrier	Title: Inter-Carrier Compensation for ISP-Bound Traffic. Summary: The Commission will consider issues related to the jurisdictional nature of dial-up traffic delivered to Internet service providers.
4	Common Carrier	Title: Continuing Property Records Audits. Summary: The Commission will consider action to release findings related to audits of continuing property records.
5	Common Carrier	Title: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Third Order on Reconsideration (CC Docket No. 96-149). Summary: The Commission will reconsider its rules implementing the non-accounting safeguard provisions of Section 272 of the Communications Act of 1934, as amended.
6	Common Carrier	Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-128). Summary: The Commission will consider action concerning payphone compensation issues remanded by the court in <i>MCI v. FCC</i> and raised in petitions for reconsideration.
7	Common Carrier	Title: Defining Primary Lines (CC Docket No. 97-181). Summary: The Commission will consider action to define "primary residential line" and "single line business line" to ensure uniformity in the way price-cap local exchange carriers assess subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs).
8	Mass Media	Title: Creation of a Low Power Radio Service (RM's-9208 and 9242). Summary: The Commission will consider a proposal to establish a low power radio broadcast service.

Additional information concerning this meeting may be obtained from

Maureen Peratino or David Fiske, Office

of Public Affairs, telephone number (202) 418-0500; TTY (202) 418-2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857-3800; fax (202) 857-3805 and 857-3184; or TTY (202) 293-8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_@inc@ix.netcom.com. Their Internet address is <http://www.itsi.com>.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993-3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966-2211 or fax (202) 966-2770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834-0100; fax number (703) 834-0111.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99-1867 Filed 1-22-99; 2:31 pm]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the
Emergency Management Institute.

Dates of Meeting: February 16-17,
1999.

Place: Federal Emergency
Management Agency, National
Emergency Training Center, Emergency
Management Institute, Conference
Room, Building N, Room 408,
Emmitsburg, Maryland 21727.

Time: Monday, February 16, 1999,
8:30 a.m.—5:00 p.m. Tuesday, February
17, 1999, 8:30 a.m.—5:00 p.m.

Proposed Agenda: Status reports on
training in response and recovery,

planning, mitigation, and simulation
and exercises; informal working
sessions regarding EMI activities;
expansion of the Independent Study
program and EMI's Higher Education
Program.

SUPPLEMENTARY INFORMATION: The
meeting will be open to the public with
approximately 10 seats available on a
first-come, first-serve basis. Members of
the general public who plan to attend
the meeting should contact the Office of
the Superintendent, Emergency
Management Institute, 16825 South
Seton Avenue, Emmitsburg, MD 21727,
(301) 447-1286.

Minutes of the meeting will be
prepared and will be available for
public viewing in the Office of the
Superintendent, Emergency
Management Institute, Federal
Emergency Management Agency,
Building N, National Emergency
Training Center, Emmitsburg, MD
21727. Copies of the minutes will be
available upon request 30 days after the
meeting.

Dated: January 8, 1999.

Kay C. Goss,

*Associate Director for Preparedness, Training
and Exercises.*

[FR Doc. 99-1747 Filed 1-25-99; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks 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 offices 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 February
10, 1999.

**A. Federal Reserve Bank of
Minneapolis** (JoAnne F. Lewellen,
Assistant Vice President) 90 Hennepin
Avenue, P.O. Box 291, Minneapolis,
Minnesota 55480-0291:

1. *Nefsy Family Voting Trust*, Miles
City, Montana; to acquire voting shares

of Stockman Financial Corporation,
Miles City, Montana, and thereby
indirectly acquire voting shares of
Stockman Bank of Montana, Miles City,
Montana.

**B. Federal Reserve Bank of Kansas
City** (D. Michael Manies, Assistant Vice
President) 925 Grand Avenue, Kansas
City, Missouri 64198-0001:

1. *Thomas G. Fitzgerald and James G.
Fitzgerald*, both of Inverness, Illinois; to
acquire voting shares of Southern
Colorado Corp., Pagosa Springs,
Colorado, and thereby indirectly acquire
voting shares of Mancos Valley Bank,
Mancos, Colorado, and Citizens Bank of
Pagosa Springs, Pagosa Springs,
Colorado.

Board of Governors of the Federal Reserve
System, January 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-1773 Filed 1-25-99; 8:45 am]

BILLING CODE 6210-01-F

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.
Unless otherwise noted, nonbanking
activities will be conducted throughout
the United States.

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 February 19,
1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *First Personal Financial Corp.*, Orland Park, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Personal Bank, Orland Park, Illinois (in organization).

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *ExTraCo Bankshares, Inc.*, Waco, Texas; to acquire 100 percent of the voting shares of Central Financial Bancorp, Inc., Lorena, Texas, and thereby indirectly acquire Central Delaware Financial Bancorp, Inc., Dover, Delaware, Bank of Troy, Troy, Texas, and Lorena State Bank, Lorena, Texas.

2. *Cameron Bancshares, Inc.*, Cameron, Texas, and Cameron Bancshares of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First National Bank, Cameron, Texas.

Board of Governors of the Federal Reserve System, January 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-1653 Filed 1-25-99; 8:45 am]

BILLING CODE 6210-01-F

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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 February 19, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Carolina First Corporation*, Greenville, South Carolina; to acquire 100 percent of the voting shares of Citizens First National Bank, Crescent City, Florida.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *United Community Banks, Inc.*, Blairsville, Georgia; to acquire 100 percent of the voting shares of Adairsville Bancshares, Inc., Adairsville, Georgia, and thereby indirectly acquire Bank of Adairsville, Adairsville, Georgia.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Hometown Banc Corp.*, Grand Island, Nebraska; to acquire 100 percent of the voting shares of Security State Bank, Sumner, Nebraska.

Board of Governors of the Federal Reserve System, January 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-1772 Filed 1-25-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely

related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 9, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *National Westminster Bank PLC*, London, England; to engage *de novo* through its subsidiary, XCO, LLC, New York, New York, in data processing and related activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, January 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-1654 Filed 1-25-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 9823600]

American Honda Motor Company, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S-4302, 601 Pa. Ave., NW, Washington, D.C. 20580, (202) 326-3042 or (202) 326-2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent American Honda Motor Company, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, labeling and promotional practices related to the sale of lawn mowers. The Commission's complaint charges that respondent misrepresented that its Honda Masters, Honda Harmony II 3-in -1, and Honda Harmony II lawn mowers are all or virtually all made in the United States when, in truth and if fact, a significant portion of the components of these lawn mowers models is, or has been, of foreign origin.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar

acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which a lawn mower is made in the United States. The proposed order would allow respondent to represent that a lawn mower is made in the United States so long as all, or virtually all, of the component parts of the lawn mower are made in the United States and all, or virtually all, of the labor in manufacturing the lawn mower is preformed in the United States.

The proposed consent order additionally provides that the order shall not apply to the labeling of lawn mowers manufactured before the effective date of the order.

Part II of the proposed order requires the respondent to maintain materials relief upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company official and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date to issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 99-1657 Filed 1-25-99; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 9923019]

Johnson Worldwide Associates, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the

consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S-4302, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326-3042 or 326-2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Johnson Worldwide Associates, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, packaging, labeling, and promotional practices related to the sale of fishing line. The Commission's complaint charges that respondent misrepresented on packaging that its Super Mono fishing line is made in the United States of America and Japanese components. In addition, the complaint charges that respondent misrepresented in advertising that its Super Mono fishing line is all or virtually all made in the United States. In truth and in fact, the Super Mono fishing line is totally made in Japan with Japanese labor and components. Only the spool on which the fishing line is wrapped and the package, labeling, and package inserts contain American labor or components.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which any fishing product is made in the United States. The order defines fishing products as any product that is intended to be used for fishing, including but not limited to fishing rods, fishing reels, fishing line, fishing lures, and fishing spoons. The proposed order would allow respondent to represent that such fishing products are made in the United States as long as all, or virtually all, of the components of the products are of U.S.A. origin and all, or virtually all, of the labor in manufacturing them is performed in the United States.

The proposed order also provides that respondent shall not make a general U.S. origin claim, whether or not accompanied by qualifying information (e.g., "Made in U.S.A. of U.S. and imported parts" or "Manufactured in U.S. with imported materials") unless the fishing product was last substantially transformed in the United States, as the term "substantially transformed" is defined by regulations or administrative rulings issued by the U.S. Customs Service under section 304 of the Tariff Act of 1930, 19 U.S.C. 1304.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more

compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99-1659 Filed 1-25-99; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 9823591]

Kubota Tractor Corporation, Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S-4302, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326-3042 or 326-2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the

full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Kubota Tractor Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, labeling and promotional practices related to the sale of lawn tractors and lawn and garden tractors. The Commission's complaint charges that respondent misrepresented that certain of its lawn tractors or lawn and garden tractors were all or virtually all made in the United States when, in truth and in fact, these products had significant foreign parts. In addition, the complaint charges that respondent misrepresented that entire product lines of lawn tractors and lawn and garden tractors were all or virtually all made in the United States. In truth and in fact, in one product line, one of the three lawn tractor models in the product line contained significant foreign part; in a second product line, both of the lawn and garden tractor models in that line contained significant foreign parts.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which a lawn tractor or lawn and garden tractor, or entire product line of lawn tractors or lawn and garden

tractors, is made in the United States. The proposed consent order defines the terms "lawn tractor" and "lawn and garden tractor" as products manufactured, labeled, advertised, promoted, offered for sale, sold, or distributed primarily for consumers to mow grass, including but not limited to respondent's T-Series lawn tractors and TG-Series lawn and garden tractors. It states that such products may be sold with or without attachments such as grass catchers, front blades, or snowblades. The proposed order would allow respondent to represent that any lawn tractor or lawn and garden tractor, or lawn tractor or lawn and garden tractor product line, is made in the United States so long as all, or virtually all, of the component parts of such product, or of all products in such product line, are made in the United States and all, or virtually all, of the labor in manufacturing such product, or of all products in such product line, is performed in the United States.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 99-1658 Filed 1-25-99; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 9923006]

Rand International Leisure Products, Ltd.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S-4302, 601 Pa. Ave., NW, Washington, DC 20580, (202) 326-3042 or 326-2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Rand International Leisure Products, Ltd.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of

the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns packaging and promotional practices related to the sale of bicycle tire tubes. The Commission's complaint charges that respondent misrepresented on its packaging for its "self-sealing" bicycle tire tubes that these tubes are made in the United States, when, in truth and in fact, the tubes were finished in the United States from imported tubes that were, or are, manufactured in Taiwan.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which any product is made in the United States. The proposed order would allow respondent to represent that a product is made in the United States so long as all, or virtually all, of the component parts of the product are made in the United States and all, or virtually all, of the labor in manufacturing the product is performed in the United States.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 99-1661 Filed 1-25-99; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 9810353]

**Service Corporation International;
Analysis To Aid Public Comment****AGENCY:** Federal Trade Commission.**ACTION:** Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Joseph S. Brownman, FTC/S-2105, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326-2605.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 15, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Service Corporation International ("SCI") an Agreement Containing Consent Order ("Consent Agreement"). The proposed Consent Order is designed to remedy the likely anticompetitive effects arising from the proposed acquisition by SCI of Equity Corporation International ("ECI").

According to the draft of complaint that the Commission intends to issue, SCI, headquartered in Houston, Texas, is the nation's largest chain of funeral homes and cemeteries. ECI, in Lufkin, Texas, is the nation's fourth largest chain. SCI and ECI compete in the sale of funeral services and cemetery services in various local markets throughout the United States. Pursuant to an agreement of August 6, 1998, SCI intends to acquire all of the stock of ECI for \$578 million.

The draft complaint alleges that the proposed acquisition would lessen competition in two relevant lines of commerce: (1) the provision of funeral services in six local geographic markets and (2) the provision of cemetery services in eight (additional) local geographic markets. Funeral services include transporting the deceased from the place of death to the funeral home, embalming and otherwise preparing the body for burial, providing a casket, holding a viewing or other ceremony, and transporting the body to the cemetery or crematorium. Although direct disposal cremation is a less costly alternative to funeral services, funeral service customers would not switch to cremation as a substitute in sufficient volume to defeat a price increase by funeral service providers.

In the market for funeral services, the Commission's draft complaint alleges that the acquisition would harm competition in the following geographic markets: (1) Phenix City, Alabama/Columbus, Georgia; (2) Evansville, Indiana; (3) Jacksonville Beach, Florida; (4) Roseville, California; (5) Ruskin/Sun City Center, Florida; and (6) West Pasco County and Tarpon Springs, Florida. In these funeral service markets, total annual sales are about \$36.6 million. Premerger concentration in these six markets, as measured by the Herfindahl-Hirschman Index,¹ ranges from more

than 2,200 to 7,450. As a result of the proposed acquisition, concentration would increase in each funeral service market by more than 100 points, to levels ranging from 3,270 to 10,000.²

According to the draft complaint, entry into the provision of funeral services in each of these six markets is difficult, and would not be timely, likely or sufficient to prevent anticompetitive effects from the acquisition.

The draft complaint alleges that a second line of commerce in which to analyze the competitive effects of the proposed acquisition is the provision of cemetery services. Cemetery services include the traditional products and services offered by perpetual care cemeteries. They include plots, mausoleum spaces, and opening, closing and maintaining grave sites. The complaint alleges that the acquisition would harm competition in the following geographic markets: (1) Broward County (Fort Lauderdale), Florida; (2) Chattanooga, Tennessee, and its north Georgia suburbs; (3) Citrus County, Florida; (4) Corpus Christi, Texas; (5) Eugene/Springfield, Oregon; (6) North Richmond, Virginia, and the northern eastern and western suburbs of Richmond; (7) the South Bay area of San Diego, California; and (8) Summit County (Akron), Ohio. In these cemetery service markets, total annual sales are about \$47.3 million. Premerger concentration in these eight markets, as measured by the HHI, ranges from 2,350 to 4,400. As a result of the acquisition, concentration would increase in each cemetery service market by more than 100 points, to levels ranging from 3,450 to 10,000.

This line of commerce does not include cemeteries that serve a distinct group of customers, such as cemeteries limited to veterans and their families, or small church cemeteries that only serve members of the church congregation. Such cemeteries are not available to members of the general public served by the parties, and consumers could not turn to them to defeat an attempt to raise prices of cemetery services to the general public. This line of commerce also does not include direct disposal cremations, even though they are an alternative to cemetery services. An increase in the price of cemetery services would not cause a sufficient number of customers to switch from

¹ The Herfindahl-Hirschman Index, or "HHI," is a measurement of market concentration calculated by summing the squares of the individual market shares of all participants in the market. Under Section 1.51 of the Horizontal Merger Guidelines issued April 2, 1992, by the Federal Trade Commission and the Department of Justice, the Commission considers concentration levels

exceeding 1,800 as "highly concentrated" and concentration levels between 1,000 and 1,800 as "moderately concentrated."

² Under the HHI, a concentration level of 10,000 denotes a monopoly market in which one firm has 100% of the market. Squaring 100 yields a total of 10,000.

cemetery services to direct disposal cremations to make the price increase unprofitable.

According to the draft complaint, entry into the provision of cemetery services in each of these eight markets is difficult, and would not be timely, likely or sufficient to prevent anticompetitive effects from the acquisition.

The proposed Consent Order, if issued by the Commission, would remedy all of the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed Consent Order, SCI must divest one or more funeral homes in each of the funeral services markets and one or more cemeteries in each of the services markets, as follows:

1. In the Phenix City, Alabama/Columbus, Georgia, funeral service market, (a) Vance Memorial Chapel, 3738 Highway 431 North, Phenix City, Alabama 36867; and (b) Vance Memorial Chapel, 2919 Hamilton Road, Columbus, Georgia 31904;

2. In the Evansville, Indiana, funeral service market, Miller & Miller Colonial Chapel, 219 East Franklin Street, Evansville, Indiana 47711;

3. In the Jacksonville Beach, Florida, funeral service market, Beaches Funeral Home, 3600 South 3rd Street, Jacksonville Beach, Florida 32250;

4. In the Roseville, California, funeral service market, Cochrane's Chapel of the Roses, 103 Lincoln Street, Roseville, California 95678;

5. In the Ruskin/Sun City Center, Florida, funeral service market, Family Funeral Care Funeral Home, 1851 Rickenbacker Road, Sun City Center, Florida 33573;

6. In the West Pasco County, Florida, and Tarpon Springs, Florida, funeral service market, Michels & Lundquist Funeral Home, 130 State Road 54, New Port Richey, Florida 34652;

7. In the Broward County, Florida, cemetery service market, (a) Evergreen Cemetery, 1300 S.E. 10th Avenue, Fort Lauderdale, Florida 33316; (b) Lauderdale Memorial Park, 2001 S.W. 4th Avenue, Fort Lauderdale, Florida 33315; and (c) Sunset Memorial Gardens, 3201 19th Street, Fort Lauderdale, Florida 33311,

8. In the Chattanooga, Tennessee, and the neighboring north Georgia suburbs of Chattanooga cemetery service market, (a) Lakewood Memory Gardens East Cemetery, 4621 Shallowford Road, Chattanooga, Tennessee 37411; (b) Lakewood Memory Gardens West Cemetery, 3509 Cummings Road, Chattanooga, Tennessee 37419; and (c) Lakewood Memory Gardens South

Cemetery, 627 Greens Lake Road, Rossville, Georgia 30741;

9. In the Citrus County, Florida, cemetery service market, Fountains Memorial Park, 4890 South Suncoast Boulevard, Homosassa Springs, Florida 34447;

10. In the Corpus Christi, Texas, funeral service market, Rose Hill Memorial Park, 2731 Comanche, Corpus Christi, Texas 78408;

11. In the Eugene/Springfield, Oregon, cemetery service market, Sunset Hills Memorial Gardens, 4810 South Willamette Street, Eugene, Oregon 97405;

12. In the North Richmond, Virginia, and the northern, eastern, and western suburbs of Richmond cemetery service market, Forest Lawn Cemetery, 4000 Pilots Land, Richmond, Virginia 23222;

13. In the South Bay area of San Diego, California, cemetery service market, LaVista Memorial Park, 3191 Orange Street, National City, California 91951; and

14. In the Summit County, Ohio, cemetery service market, Greenlawn Memorial Park, 2580 Romig Road, Akron, Ohio 44320.

SCI must complete the required divestitures to Carriage within seven days from the date the Consent Order becomes final, or 120 days from the date of the signing of the Agreement Containing Consent Order, whichever is earlier. In the event SCI does not divest the assets to an acquirer or acquirers acceptable to the Commission in the required time, the Consent Order establishes procedures for the appointment of a trustee to sell the assets. Also, for a period of ten years, SCI must give prior notice to the Commission of any proposed acquisition of a funeral home or cemetery, as applicable, in each of the 14 local markets. The Consent Order also requires SCI to deliver a copy of the required notice to the office of the attorney general in each state where any to-be-acquired assets are found.

An Asset Maintenance Agreement accompanies the proposed Consent Order. Under its terms, SCI must preserve and maintain the assets that it must divest. The procedures enumerated in the Asset Maintenance Agreement will ensure the continued competitive viability of these assets after they are divested.

The proposed Consent Order also requires SCI to provide the Commission a report of compliance with the terms of the order within thirty days following the date on which the order becomes final, every thirty days thereafter until the divestitures are completed, and annually for a period of ten years.

The proposed Consent Order has been placed on the public record for sixty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

By accepting the proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Consent Order in order to aid the Commission in its determination of whether to make the proposed Consent Order final. It is not intended to constitute an official interpretation of the proposed Consent Order, nor is it intended to modify the terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99-1655 Filed 1-25-99; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 9823570]

Stanley Works; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S-4302, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326-3042 or 326-2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent The Stanley Works.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, marking, packaging, labeling, and promotional practices related to the sale of mechanics tools. The Commission's complaint charges that respondent misrepresented that certain of its mechanics tools were all or virtually all made in the United States when, in truth and in fact, a significant proportion of their content was of foreign origin.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which its mechanics tools are

made in the United States. The order defines mechanics tools as professional grade hand tools (other than carpentry tools) used by consumers or professionals in the assembly, repairs, or maintenance of machinery or vehicles, or for other purposes. Such tools include, but are not limited to, wrenches, ratchets, sockets, and chisels. The proposed order would allow respondent to represent that such mechanics tools are made in the United States as long as all, or virtually all, of the components of the mechanics tools are of U.S. origin and all, or virtually all, of the labor in manufacturing them is performed in the United States.

The proposed consent order additionally provides that the order shall not apply to the marking of mechanics tools or components of mechanics tools forged, machined, or cast before the date that the complaint and order became final.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 99-1656 Filed 1-25-99; 8:45 am]
BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 9823587]

USDrives Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S-4302, 601 Pa. Ave., NW, Washington, DC 20580, (202) 326-3042 or 326-2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent USDrives Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received

and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, packaging, labeling and promotional practices related to the sale of optical drives that read information on compact disc read-only memory discs ("CD-ROM drives"). The Commission's complaint charges that respondent misrepresented that its CD-ROM drives were all or virtually all made in the United States when, in truth and in fact, its CD-ROM drives were assembled in the United States of primarily imported parts. In addition, the complaint charges that respondent misrepresented that CD-ROM drives that were made in China or primarily non-U.S. parts were all or virtually all made in the United States.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which any CD-ROM drive is made in the United States. The proposed order would allow respondent to represent that a CD-ROM drive is made in the United States so long as all, or virtually all, of the component parts of the CD-ROM drive are made in the United States and all, or virtually all, of the labor in manufacturing the CD-ROM drive is performed in the United States.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99-1660 Filed 1-25-99; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N-0747]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Customer/ Partner Satisfaction Surveys; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 24, 1998 (63 FR 71294). The document announced that a proposed collection of information had been submitted to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995. The document was published with an incorrect docket number. This document corrects that error.

DATES: JANUARY 26, 1999.

FOR FURTHER INFORMATION CONTACT: Silvia R. Fasce, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 98-34111, appearing on page 71294 in the **Federal Register** of Thursday, December 24, 1998, the following correction is made:

1. On page 71294, in the first column, in the third line, "[Docket No. 97N-0260]" is corrected to read "[Docket No. 98N-0747]".

Dated: January 20, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99-1711 Filed 1-25-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pharmacy Compounding Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Pharmacy Compounding Advisory Committee which is scheduled for February 4 and 5, 1999. This meeting was announced in the **Federal Register** of January 6, 1999 (64 FR 886). The amendment is being made to reflect a change in the *Procedure* portion of the meeting notice. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Igor Cerny or Tony Slater, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7001, or FDA Advisory Committee Information Line, 1-800-741-8183 (301-443-0572 in the Washington, DC area), code 12440.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 1999 (64 FR 886), FDA announced that a meeting of the Pharmacy Compounding Advisory Committee would be held on February 4 and 5, 1999. This amendment is being made to reschedule the time allotted for oral presentations from the public.

On page 887, in the first column, the *Procedure* portion of this meeting notice is amended to read as follows:

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 January 29, 1999. Oral presentations from the public will be scheduled on February 4, 1999, between approximately 11 a.m. and 12 m. for: Mild silver protein, 4-aminopyridine, and 3,4-diaminopyridine, and between approximately 3 p.m. and 4 p.m. for: Hydrazine; and on February 5, 1999, between approximately 10 a.m. and 11 a.m. for: Dinitrochlorobenzene, diphenylcyclopropenone, and squaric acid dibutyl ester, and between approximately 3 p.m. and 4 p.m. for: Pentylene tetrazole, cyclandelate, and betahistine dihydrochloride. Time allotted for each presentation may be

limited. Those desiring to make a formal oral presentation should notify the contact person before January 29, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 20, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99-1709 Filed 1-25-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E-0759]

Determination of Regulatory Review Period for Purposes of Patent Extension; Anzemet®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Anzemet® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was

marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Anzemet® (dolasetron mesylate). Anzemet® is indicated for the prevention of nausea and vomiting associated with moderately-emetogenic cancer chemotherapy, including initial and repeat courses, and for the prevention of postoperative nausea and vomiting. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Anzemet® (U.S. Patent No. 4,906,755) from Hoechst Marion Roussel, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 10, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Anzemet® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Anzemet® is 2,443 days. Of this time, 1,729 days occurred during the testing phase of the regulatory review period, 714 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* January 5, 1991.

FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 5, 1991.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* September 29, 1995. The applicant claims September 28, 1995, as the date the new drug application (NDA) for Anzemet® (NDA 20-623) was initially submitted. However, FDA records indicate that NDA 20-623 was submitted on September 29, 1995.

3. *The date the application was approved:* September 11, 1997. FDA has verified the applicant's claim that NDA 20-623 was approved on September 11, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,578 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 29, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 26, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99-1710 Filed 1-25-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. 98D-0172]

Guidance on Amended Procedures for Advisory Panel Meetings; Availability**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings." The purpose of the guidance document is to establish standard operating procedures (SOP's) to be followed by the Center for Devices and Radiological Health (CDRH), the Center for Biologics Evaluation and Research (CBER), FDA personnel, and interested persons outside FDA in carrying out the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments concerning the guidance document may be submitted at any time.

ADDRESSES: Submit written comments on the guidance document to one of the contact persons listed below. Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ-400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2022; or William Freas, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-1295.

SUPPLEMENTARY INFORMATION:**I. Background**

The guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" was

developed to establish SOP's to be followed by CDRH, CBER, FDA personnel, and interested persons outside FDA in carrying out section 513(b)(6) of the act (21 U.S.C. 360c(b)(6)) as amended by section 208 of FDAMA. New section 513(b)(6)(A) of the act requires that FDA provide to any person whose device is specifically the subject of a classification panel review the same access as FDA to data and information about the device as that submitted to the panel, except for data and information that are not available for public disclosure under the Freedom of Information Act (5 U.S.C. 552). FDAMA further amended the act to require FDA to provide such persons the opportunity to submit information, based on the data or information provided in the application under review, to the panel for its review. Section 513(b)(6)(iii) amended the act to allow such persons the same opportunity as FDA to participate in panel meetings. Section 513(b)(6)(B) of the act requires that adequate time be provided for initial presentations and for response to any differing views by persons whose devices are specifically the subject of a classification panel, and that free and open participation by all interested parties be encouraged. FDA announced the availability of the draft guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" in the **Federal Register** of March 31, 1998 (63 FR 15426). The agency received one comment on the draft guidance document. FDA has reviewed the comment and has made some revisions to clarify the guidance. In addition, FDA agrees with the comment that another guidance document entitled "Policy and Guidance Handbook for FDA's Advisory Committees" should be subject to the agency's good guidance practices (GGP's). That guidance document is currently being revised.

This revised guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" supersedes the guidance document that was announced on March 31, 1998.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the amended procedures for advisory panel meetings. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The agency has adopted GGP's, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" via your fax machine, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 413 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance document may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes "Guidance on Amended Procedures for Advisory Panel Meetings," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at <http://www.fda.gov/cdrh>. The guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" will be available on CDRH's website at <http://www.fda.gov/cdrh/modern/modguid.html> and on CBER's website at <http://www.fda.gov/cber/guidelines.htm>.

IV. Comments

Interested persons may, at any time, submit written comments regarding this guidance document to one of the contact persons listed above. Such comments will be considered when determining whether to amend the current guidance.

Dated: January 10, 1999.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 99-1662 Filed 1-25-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Indian Health Service**

[0917-ZA05]

Reimbursement Rates for Calendar Years 1998 and 1999

Notice is given that the Director of Indian Health Service, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b) and section 601 of the Indian Health Care Improvement Act (25 U.S.C. 1601), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Indian Health Service for Calendar Year 1998 and Calendar Year 1999: Medicare, and Medicaid Beneficiaries and Beneficiaries of other Federal agencies. Also, with Respect to Medicaid inpatient rates, Indian Health Service facilities may elect to receive payments for physician services by meeting those requirements under an approved State Medicaid plan.

	Calendar year 1998	Calendar year 1999
Inpatient Hospital Per Diem Rate (Excludes Physician Service)		
Lower 48 States	\$1,040	\$1,065
Alaska	1,300	1,331
Outpatient Per Visit Rate (Excluding Medicare)		
Lower 48 States	168	172
Alaska	241	241
Outpatient Per Visit Rate (Medicare)		
Lower 48 States	138	138
Alaska	210	210
Medicare Part B Inpatient Ancillary Per Diem Rate		
Lower 48 States	420	420

	Calendar year 1998	Calendar year 1999
Alaska	533	533

Outpatient Surgery Rate (Medicare)

Established rates for freestanding Ambulatory Surgery Centers.

Effective Date of Calendar Year 1998 and Calendar Year 1999 Rates

Consistent with previous annual rate revisions, the Calendar Year 1998 rates will be effective for services provided on/or after January 1, 1998 and the Calendar Year 1999 rates will be effective for services provided on/or after January 1, 1999.

Dated: January 19, 1999.

Michel E. Lincoln,

Acting Director.

[FR Doc. 99-1717 Filed 1-25-99; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institute of Child Health and Human Development****Proposed Collection: Comment Request; Preventing Problem Behavior Among Middle School Students**

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act, for the opportunity for public comment on the proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION:

Title: Preventing Problem Behavior Among Middle School Students.

Type of Information Collection

Request: Extension, OMB Number 0925-0436, Expiration Date 6/30/99.

Need and Use of Information

Collection: The purpose of this study is to test the efficacy of a comprehensive program of interventions that include participatory classroom curriculum, parent education and enhanced school environment. Middle schools in one school district in Maryland were assigned to either a special intervention treatment condition or usual education (control) condition. The intervention is sequentially structured with curricula implemented in each grade of middle school. Classroom-administered questionnaires were administered to all middle schools prior to the intervention to establish baseline levels of the variables of interest, including substance use, school misconduct, parent and peer influences, and school climate. Data is collected annually after the completion of the grade level intervention. Information about parenting style will be collected on a sample of parents of participating student using telephone interviews.

As of the expiration of the current OMB approval, data will have been collected on one cohort of middle school students annually throughout middle school (6-8 grade) and two years of data collection on the second cohort of students (grades 6 and 7). Completion of the study as proposed includes collecting data on the second cohort in grade 8 and follow-up measurement of both cohorts in grade 9. Data will also be collected on a sample of parents.

Frequency of Response: Data will be collected 2 times over a two-year period.

Affected Public: Individuals or households; State, local or Tribal Governments.

Type of Respondents: Children and their parents.

Respondent and Burden Estimate Information:

Type of respondent	Estimated number of respondents	Estimated number of annual responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Children in Cohort 1	1370	1	.91	1248
Children in Cohort 2	1390	1	.91	1264
Parents	250	1	1.0	375
Total	3010	.....	.....	2887

Annualized cost to respondents
(based on \$10.00 per hour): \$28,870.00.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points:

(1) Whether the proposed collection of information is necessary for the proper performance of the function 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 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 for other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bruce Simons-Morton, Chief, Prevention Research Branch, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, Building 6100, Room 7B05, 9000 Rockville Pike, Bethesda, MD 20892-7510 or call non-toll free number (301) 496-1126 or E-mail your request, including your return address to bm79K@nih.gov.

COMMENT DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 18, 1999.

Benjamin Fulton,

Executive Officer, NICHD.

[FR Doc. 99-1728 Filed 1-25-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Fogarty International Center Advisory Board.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board Subcommittee.

Date: February 8, 1999.

Closed: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301-496-2075.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 8-9, 1999.

Open: February 9, 1999, 8:30 a.m. to 12:30 p.m.

Agenda: Presentation by the Director and two presentations on Medical Bioethics.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Closed: February 9, 1999, 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301-496-2075.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-1725 Filed 1-25-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Analytical Chemistry and Stability Testing of Treatment Drugs".

Date: February 17, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10-42, Rockville, MD 20857, (301) 443-1644.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-1722 Filed 1-25-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group Epidemiology and Prevention Research Subcommittee.

Date: February 9–10, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Susan L. Coyle, Chief, Clinical, Epidemiological and Applied Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Epidemiology and Prevention.

Date: February 10, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Kesinee Nimit, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

Name of Committee: National Institute on Drug Abuse Initial Review Group Basic Behavioral Science Research Subcommittee.

Date: February 17–18, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Mark Swieter, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Human Brain Project.

Date: February 23–24, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Mark Swieter, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Program Projects.

Date: February 23, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Rita Liu, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Centers.

Date: February 24, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Rita Liu, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Medication Development.

Date: February 24, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Khursheed Asghar, Chief, Basic Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–2620. (Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 19, 1999.

LaVerne Y. Stringfield.

Committee Management Officer, NIH.

[FR Doc. 99–1723 Filed 1–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: February 10–12, 1999.

Open: February 11, 1999, 8:30 a.m. to 4:15 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; and other administrative and program developments.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: February 11, 1999, 4:15 p.m. to 5:30 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' reports.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: February 12, 1999, 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, Ph.D., Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke,

National Institutes of Health, Federal Building, Room 1014, 7550 Wisconsin Avenue, Bethesda, MD 20892, (301) 496-9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Council Review Committee.

Closed: February 10, 1999.

Time: 6:00 p.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 8A28, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, Ph.D., Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Federal Building, Room 1014, 7550 Wisconsin Avenue, Bethesda, MD 20892, (301) 496-9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-1724 Filed 1-25-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK-1 GRB-D (M2).

Date: January 26, 1999.

Time: 10:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS-37, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Hagan, Chief, Review Branch, National Institute of Diabetes, Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6AS37, Bldg. 45, Bethesda, MD 20892, (301) 594-8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93-848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-1726 Filed 1-25-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Ultra Thin Walled Wire Reinforced Endotracheal Tubing"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application S/N 08/645, 887 entitled, "Ultra Thin Walled Wire Reinforced Endotracheal Tubing" filed on May 15, 1996 and now U.S. Patent 5,722,395 which issued on March 3, 1998 to Vital Signs, Inc. of Totowa, New Jersey. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be for the United States. **DATES:** Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before March 29, 1999 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Richard U. Rodriguez, M.B.A.,

Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852-3804. Telephone: 301/496-7056, ext. 287; Facsimile: 301/402-0220; E-mail: rr154z@nih.gov.

SUPPLEMENTARY INFORMATION: U.S. Patent 5,722,395 claims an ultra thin walled wire reinforced endotracheal tubing which includes a thin walled tubing comprising a polymeric material having a spring material incorporated therewith. Utilization of the spring wire material in combination with polymeric material results in a reduced wall thickness which results in a significant decrease in resistance to air flow through the endotracheal tubing and therefore should permit a patient to breathe in a more relaxed fashion so as not to become exhausted. The endotracheal tubing of the present invention is made by depositing a dissolvable polymeric material onto a rotating mandrel in successive layers. A spring material is also applied around the mandrel to produce the ultra thin walled wire reinforced endotracheal tubing.

The prospective exclusive license: will be royalty-bearing; will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7; and it will be structured in such a way not to preclude the U.S. Public Health Service from licensing the patent rights of U.S. Patents 5,305,740, 5,429,127, 5,537, 729, 5,711,296 and 5,785,998 and allowing appropriate licensees the right to practice these patent rights worldwide.

The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 20, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99-1727 Filed 1-25-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Availability of a Final Environmental Assessment and the Strategy and Guidelines for the Recovery and Management of the Red-cockaded Woodpecker and Its Habitat on National Wildlife Refuges**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service or we) announces the availability of a finalized Strategy and Guidelines for the Recovery of the Red-cockaded Woodpecker (RCW) and Its Habitat on National Wildlife Refuges (Guidelines). Included in the Guidelines are population management objectives for 644–654 active clusters of RCWs on approximately 141,900 acres of pine and pine hardwood forest on 13 refuges in the southeastern United States. We will implement actions directed at protection of clusters, management of nesting habitat, population management, management of foraging habitat, forest management (including silvicultural activities), and management of RCWs in federally designated Wilderness.

We also announce the availability of a final environmental assessment (EA) and Finding of No Significant Impact (FONSI). The EA includes an evaluation of the environmental impact of four alternatives: (1) implementing the Guidelines as proposed; (2) taking no action to comprehensively implement revised recovery guidelines and strategies; (3) implementing the Guidelines, intensifying management efforts and expanding the area to be managed for RCWs; and (4) implementing the Guidelines on a smaller area of refuge land.

You may obtain copies of the Strategy and Guidelines and the EA by making a request in writing to the Regional Office (see **ADDRESSES**). This notice also advises the public that we have made a determination that issuing the Guidelines is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. We base the FONSI on an evaluation of the information contained in the Guidelines and provide this notice pursuant to NEPA regulations (40 CFR 1506.6).

DATES: We plan to implement the strategy and Guidelines effective upon

publication of this notice in the **Federal Register**.

ADDRESSES: Persons wishing to obtain a copy of the Strategy and Guidelines, should submit a request in writing to: U.S. Fish and Wildlife Service, Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345. (Attn: Assistant Regional Director, Refuges and Wildlife.) You may also obtain copies at the Southeast Regional Office (address above) and at the following locations: Office of the Red-cockaded Woodpecker Recovery Coordinator, U.S. Fish and Wildlife Service, Clemson University, Department of Forest Resources, 261 Lehotsky Hall, Clemson, SC 29634–1003, and Office of the Refuge Manager, Noxubee National Wildlife Refuge, Route 1, Brooksville, MS 39739.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Costa, Red-cockaded Woodpecker Recovery Coordinator, Clemson Field Office, (see **ADDRESSES** above), telephone: 864/656–2432, or Mr. David Richardson, Biologist, Noxubee National Wildlife Refuge (see **ADDRESSES** above), 601/323–5548.

SUPPLEMENTARY INFORMATION:**Background**

The Service is the lead Federal agency responsible for preserving, protecting and enhancing nonmarine endangered species. We listed the RCW as an endangered species in 1970. In addition to responsibilities under the Endangered Species Act (Act), we administer National Wildlife Refuge system lands. There are an estimated 141,900 acres of pine and pine-hardwood habitat capable of supporting RCWs on 13 national wildlife refuges in the southeast United States.

The RCW is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups or clans which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. We call the aggregate of cavity trees a cluster. RCWs forage almost exclusively on pine trees, and they generally prefer pines greater than 10 inches in diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres

required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature fire-maintained ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, and residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurring in 13 southeastern states), but the remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

The most recent estimate of the status of RCW populations on National Wildlife Refuge lands indicates that 237 to 242 active RCW clusters are present.

The EA contains an evaluation of the environmental consequences of four alternatives, including the action to be implemented. This "action" alternative would result in implementation of the Guidelines as prepared by the Service. The "no action" alternative would result in a continuance of the current management activities with no revision to the guidelines for management actions or recovery on refuge lands beyond the actions contained in the 1987 Guidelines and the recovery plan for this species. The third alternative is to implement the Guidelines and expand their application to include additional habitat on Alligator River, Piedmont and Santee National Wildlife Refuges. The fourth alternative would result in a 50% reduction in the managed area under the revised Guidelines and a reallocation of resources to other wildlife management needs.

As stated above, we have made a determination that the issuance of the Guidelines is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. We provide an excerpt from the FONSI reflecting our finding on the application below:

Based on our analysis, we determined that:

1. Issuance of the Guidelines would not have significant indirect or cumulative adverse effects on the human environment.

2. Implementation of the Guidelines will contribute substantially to the recovery of the RCW by providing for consistent application of the most

appropriate forms of management available on all refuge lands. Application of the Guidelines will also assure that we accomplish forest management in a manner which will result in accelerated recovery of the species.

3. Population goals contained in the Strategy and Guidelines are substantially higher than the current population levels and would represent a major positive step towards recovery of the RCW.

We also have evaluated whether the issuance of the Guidelines complies with section 7 of the Act by preparing an intra-Service section 7 consultation. The results of the consultation in combination with the above findings, and public comment were used in the final analysis to make the decision to issue and implement the Guidelines.

Public Comments Received

The proposal to issue the above Guidelines was announced in the **Federal Register** on March 13, 1998 (63 FR 12498). In addition to general notice in the **Federal Register**, the draft Guidelines were distributed widely internally and to Service partners when an expression of interest was made. Public comment was open from the date of issue until close of business on April 27, 1998.

We received 36 requests for the Strategy and Guidelines and Draft Environmental Assessment and 4 sets of written comments. Respondents submitting written comments were: Mr. W. V. McConnel, Land Management Planner and Forester; Ms. Margaret S. Copeland, private citizen; Mr. Robert Bonnie, Economist, in the Wildlife Program of the Environmental Defense Fund; and Dr. Jerome A. Jackson, Professor of Biological Sciences, Mississippi State University. Many of the comments were editorial in nature, and we incorporated changes into the text. Other comments consisted of philosophical statements with no specific directions to amend the Guidelines or EA. Listed below are our responses to the substantive comments, summarized and grouped by subject matter category.

All letters requesting copies of the Guidelines and EA as well as written comments are on file at the Southeast Regional Office of the Fish and Wildlife Service and are available for review on request.

A. General Comments

1. The range of 60–90 million acres for the original extent of the longleaf pine forest seems rather imprecise. Don't we have better figures? If not, perhaps an explanation?

Answer: Frost (1993) estimated that prior to European settlement the southern pine ecosystem covered 92 million acres. Longleaf pine dominate 74 million of these acres and longleaf pine mixed with other pines and hardwoods dominate the remaining 18 million acres.

2. The figures presented on historic timberlands give no indication of habitat quality. The extent of old growth is what is important. Of the 4 million acres referred to as existing now, how much is old growth RCW habitat? See also Jackson 1988.

Answer: An assessment of this type is beyond the scope of guidelines which focus on the management of refuge forest lands as they relate to the recovery and management of the RCW. We now consider none of the refuge forest old growth and believe an estimated 3–4000 acres of virgin longleaf forest to be left.

3. P. 26. "Bluebook" is not defined. Don't use in-house jargon that is meaningless to the reader.

Answer: We made changes in text to clarify use of the term "Bluebook."

B. Management Methods/Actions

1. P. 4. First paragraph, last sentence. This sentence needs to be stronger and more clearly written. The commenter suggests something like the following: "Efforts to accomplish Actions 1 and 2 should begin immediately if not already underway. Specific goals need to be set and a sustained action plan established and functioning within two years."

Answer: We made no changes; the statement in text is accurate.

2. P. 12. Monumentation. The commenter recommended adding cavity start with some scale of the extent of the start to the list: surface = <2 inches deep; tunnel = >2 inches deep, but no downward excavation; incomplete chamber = not a completed cavity, but capable of offering shelter—a bird can turn around in it. Flagging used on cavity trees should not be left with "long tails" blowing in the wind. The commenter further was against red flagging because of its potential as a negative behavioral stimulus and feel strongly that numbered tags should be unique—i.e., tags that simply say "1," "2," etc. should not be in every cluster. A system should be developed to identify individual nest trees by a unique number.

Answer: Refuge procedures will assure that trees are individually identifiable although we have not yet worked out the specific methods. We noted other technical comments.

3. P. 16. Lines 12, 13. The commenter sees no justification for using snake nets

(SNETs) under any circumstances. They are a lethal and very cruel device and simply cannot be justified. A recent suggestion to lower the SNETs to near ground level is untenable—there is no evidence to suggest that they would not capture birds even at that level and there is a much greater chance that they would ensnare and cause the slow death of a wide range of species.

Answer: We made changes in the text and will not authorize use of SNETs with the possible exception of research.

4. P. 23. Banding and marking.

Banding should be done only by experienced, well-trained personnel. The commenter's recommendation would be to have a crew of trained individuals travel from refuge to refuge to do the banding—especially of nestlings. Injuries are occurring as a result of carelessness and lack of experience by the banders. Trainees should not be capturing RCW nestlings, but should be getting experience by banding the nestlings of other woodpecker species.

Answer: We already required this under section 10(a)(1)(A) of Endangered Species Act.

5. P. 25. The mandate to color band all nestlings at all sites each year (MIL 4) is not reasonable. There needs to be a good reason to do this and there needs to be flexibility. Survival of nestlings is much more important than rushing to get all of them banded, or trying to band nestlings that already have their eyes open, or having someone who is inadequately trained attempt to band them. The commenter emphasized here too that "training" per se is not enough. The commenter has frequently had students who were very bright who simply did not have the dexterity and patience to competently band adults, let alone nestlings. He feels that whoever is sent for training gets certified—and that not all of these individuals should really be attempting to band nestlings. It is not something that everyone can reasonably do. In addition to the mechanics of doing it, the disturbance of checking nests in small populations may not be justified. Some of the losses on the Daniel Boone NF may have been a result of disturbance as a result of too frequent nest checks.

Answer: We require that all activities, including banding, be conducted in a manner that will not result in a detriment to RCW. The Guidelines do not authorize any activities that will result in take of RCW absent the required permits and review.

6. P. 34. See discussion in Jackson et al. 1986 relative to management of RCWs in wilderness areas.

Answer: We reviewed the discussion by Jackson and made no changes in text.

7. P. 35. The commenter doesn't understand why a cooperative agreement should be necessary in order for there to be RCWs on Tombigbee National Forest; The Mississippi State University, John W. Starr Memorial Forest; and the State of Mississippi, Noxubee County School Board lands. In the case of the National Forest, that is Federal land with a clear obligation towards endangered species. There are recent historical records of the species from Tombigbee National Forest, and the species most likely disappeared from there as a result of inadequate management for the species—a potential violation of the ESA. Certainly Tombigbee National Forest has suitable habitat for the species and their stated goal should not be a population of zero RCWs—which is their currently stated management goal! In the case of the other two properties, there are also recent historical records of the RCW from these properties—birds which disappeared directly as a result of management actions taken by those responsible for the properties. Such actions were also potentially—almost certainly—in violation of the ESA since Federal monies are involved with each property. They are also potentially (probably) in violation of state endangered species law. The commenter feels FWS should first of all be in the business of enforcing the law and protecting the species—not in the business of negotiating away habitat and management responsibilities for endangered species.

Answer: The Guidelines presented here apply to the recovery and management of the RCW on national wildlife refuge lands. We noted the comments, but they are beyond the scope of these Guidelines.

8. While Bienville National Forest has been designated the “recovery” population in Mississippi, Noxubee NWR's contributions are too important to relegate to “second class.” RCW research potential at Noxubee is vital, too.

Answer: We made changes in the text.

9. Why aren't Barge and Georgia Pacific included in the listings?

Answer: A Memorandum of Agreement is in effect with Georgia Pacific. We do not intend to exclude involvement of other private landowners by these Guidelines. In fact, we endorse and encourage such cooperation.

10. Does the PVC pipe eliminate the Red-bellied Woodpecker's competition for a cavity?

Answer: We do not believe that use of the pipe eliminates red-bellied woodpecker use of cavities.

11. A trained bander could readily travel from refuge to refuge (particularly all the smaller refuges) and band birds with less trauma to the RCWs and perhaps refuge personnel.

Answer: We noted the comments.

12. Some provision needs to be made to get RCWs, injured during banding, to trained people for rehabilitation and release. Probably the Forest Service needs that same type of help.

Answer: We noted the comments. Efforts are underway, in cooperation with personnel at Fort Bragg, to identify veterinarians in each state who could act as rehabilitators.

13. Cluster Survey/Inspection guidelines do not specifically require inspection with the “peeper” because a hole does not necessarily mean that a cavity is usable. The prime use of the “peeper” is to determine the condition of the cavities. Knowing this is essential to providing the number of cavities needed to maximize productivity.

Answer: We do not require cavity inspection with a peeper but recommend it as a useful tool to inspect cavities.

14. Does the Service have standard reporting forms for all RCW monitoring, etc.? Could you quickly have statistics that will help in decision making once information is readily shared and accessible.

Answer: We noted the comments, prepared forms, and will issue them in the near future.

15. Goals in the plan should focus on doing the maximum for RCWs rather than establishing minimum standards. RCW management at Noxubee NWR has demonstrated what intensive management can do in a matter of a few years. Why can't we move in that direction across the board immediately?

Answer: It is our intent to do the maximum extent of recovery and management for this species given habitat limitations, fund and staff resources, etc. In some instances other resource management efforts, including recovery of other threatened or endangered species, may limit efforts aimed exclusively at the RCW. We strive to take an ecosystem approach to management and recovery activities.

16. It is stated in the Guidelines that “The NWR System should set an example for proper RCW management through an aggressive program using all opportunities to enhance RCW populations.” Firm timetables for this plan are needed. A greater than 10% increase (perhaps 20 to 25%) for the smaller refuges would be a more

reasonable goal in “setting an example” with an aggressive program.

Answer: We noted the comments.

Based on recent studies we believe that the maximum annual increase in RCW populations is about 10%, regardless of population size. We base this on studies of numerous populations throughout the species range.

17. Concern was expressed that the Service may be overlooking opportunities to manage for RCWs on several refuges in North Carolina and perhaps elsewhere. Pocosin Lakes NWR is listed in the draft NWR Guidelines as containing only one active cluster. The Service should conduct aerial surveys of Pocosin Lakes, Mattamuskeet, Cedar Island and Swanquarter NWRs if it has not already done so to better determine the extent of current use of these areas by RCWs.

Answer: This year we plan Surveys at Alligator River National Wildlife Refuge. We acknowledge the need to conduct new surveys and will accomplish this as funds become available. Refuges with no known population of RCWs are not free from the responsibility to survey habitat prior to authorizing activities that may impact woodpecker populations. The refuges listed are those with known populations of RCWs. Future comprehensive conservation planning efforts should identify recovery and management needs for the RCW and other threatened or endangered species.

18. Concerned was expressed that if the Service has neglected opportunities in these North Carolina refuges that it may have done the same for refuges in other states. Given the land management objectives of the National Wildlife Refuges (not to mention the fact that the Refuges are managed by the Service itself), the Service should pursue all opportunities to bolster recovery efforts on these lands.

Answer: We agree and efforts are now underway, see answer B.17.

19. The Service should seek to enter into safe harbor agreements with corporate and other private landowners in order to stabilize and increase available RCW habitat on lands surrounding refuges. This is especially important since several refuges have relatively small current and potential RCW populations. By stabilizing and perhaps increasing RCW numbers around refuges through safe harbor, this approach would in turn strengthen RCW populations on the refuges. Safe harbor agreements have been praised by both landowners and conservationists and offer a unique opportunity to build bridges with landowners surrounding refuges. Under the Service's proposed

national safe harbor policy, such agreements would not require completion of an HCP but could instead be done more easily through Section 10(a)(1)(A) permits. The Service could facilitate safe harbor agreements by using the expertise of refuge staff to assist landowners in baseline surveys and in undertaking proactive RCW management (such as artificial cavity construction).

Answer: As we develop refuge comprehensive management plans, we will identify and evaluate these considerations. Safe harbor and other Section 10 activities are valuable management tools but are beyond the scope of management guidelines for federally owned lands.

C. Management of Understory/Midstory

1. P. 4, paragraph 2, line 4. The commenter feels it is important not to give the impression that all hardwoods need to be eliminated from RCW habitat. Hardwoods mixed with pines provide habitat diversity that increases the diversity and stability of the bird's arthropod food supply and small strands of hardwoods often provide habitat barriers that separate adjacent RCW groups—for example, the boundaries among cavity clusters near refuge headquarters at Noxubee NWR. Do not destroy these natural barriers. Hardwoods need to be controlled, but not eliminated. They provide very important functions within the RCW's ecosystems. Furthermore, the importance of hardwoods likely varies from one geographic region to another—one across-the-range-of-the-species management plan for controlling hardwoods is not appropriate. Distinctions do need to be made between hardwoods in the proximity of cavity trees and hardwoods within foraging habitat, though both need to be controlled.

Answer: The draft text indicates that some hardwoods will remain in RCW habitat. We further modified text to reflect retention of hardwood component in the understory and midstory.

2. P. 12. Midstory Control. The statement "The removal of within-canopy hardwoods in the immediate vicinity of cavity trees is necessary" is ambiguous and needs to be clarified. The commenter disagrees that all such hardwoods must be removed. Removal should be a site-specific decision. Pruning might be an appropriate alternative in some situations. They also disagree strongly with the removal of all hardwood stems within 50 feet of a cavity tree. This says that even trees like dogwood would have to be removed.

Again, the commenter feels, hardwoods play a positive role in RCW ecology too. They agree completely with the statement regarding retention of hardwoods to protect the cluster from wind damage. Examples of where such damage has occurred as a result of overaggressive hardwood removal include the Daniel Boone National Forest and D'Arbonne National Wildlife Refuge.

Answer: See answer C.2. We clarified the text to indicate that a hardwood component should remain.

3. P. 20. Last paragraph, line 2. The continued reference to Henry 1989 needs to be given further consideration. Henry's cookbook approach to habitat quality has no scientific basis as an "across the range of the species" management guideline. A 10-inch diameter tree in coastal South Carolina is considerably different from a 10-inch diameter tree in the Florida flatwoods. There are no data whatsoever that suggest they offer equivalent foraging opportunities for the RCW.

Answer: Comments noted. The "Henry Guidelines" are standard guidance for Federal properties. Our policy provides for development of population specific foraging guidelines based on multiple years of monitoring data and analysis of habitat use by groups.

4. P. 20. "Midstory-free forested corridors" absolutely not needed. A reduced midstory is needed, but not "midstory-free." This cut-it-all mentality not only creates an environment that would not be found in a natural ecosystem, it adds greatly to management costs and level of disturbance in the forest.

Answer: Changes made in text to reflect that the midstory will not be "midstory-free."

5. The section on Midstory Control should have a sentence suggesting that some 12 inch diameter trees be left dead as snags for other cavity nesting birds. The recommended removal of hardwoods seems too harsh. For example, the Forest Service plan allows dogwood and persimmon trees to remain. Hardwood midstory may be used by RCWs for foraging and provides protection from predators. Have studies on the first flights of RCWs indicated the importance of hardwood midstory for protection from predators and for foraging habitat?

Answer: We acknowledge the valid concern expressed but believe that the current text adequately addresses the concern.

6. Firewood cutting is the "best" way to remove midstory without damaging the remaining pine trees and the land in

the cluster. This method should be listed number one and should be used by the smaller refuges? The commenter realizes the shear V-blade is faster—but the tracks left by the equipment are horrible and the mess left behind is really a fire hazard during the prescribed burns.

Answer: We determine the best method for midstory control on a case-by-case basis depending on stand characteristics, need, site conditions, administration factors and demand.

D. Forest Regeneration

1. P. 4. Paragraph 3. The commenter believes really serious consideration needs to be given to the extent of regeneration needed to "mimic" natural ecosystem processes. We have not eliminated southern pine beetles, thus they still function in the ecosystem—and often function in a positive way relative to the birds. We also can control fire in the ecosystem. In many cases regeneration is overdone and not needed to sustain the ecosystem. Nature provides regeneration and has done so without human assistance up until very recently.

Answer: We agree and considered the factors discussed and addressed them in the text.

2. P. 9. One commenter felt the maximum regeneration patch sizes are much too large for a National Wildlife Refuge—our refuges are not, and should not be, tree farms and there is no justification or need for such large regeneration areas. How about 5 and 10 acres? What justification is there for regular "rotations" at all—except commercial exploitation—which seems inappropriate for National Wildlife Refuges?

Answer: The Guidelines allow for 5 and 10 acre clearings. We provide individual refuges flexibility to apply the guidelines in their particular area. All regeneration, except off site slash pine, requires retention of some seed trees. A forest modified through seed tree and Shelterwood regeneration cuts does not necessarily result in non-woodpecker habitat.

3. Natural disturbances (in particular lightning strikes and wind problems) seem to be prolific in most of the RCW clusters. Regeneration by nature seems to be more than enough without the removal of the older trees that are vital for RCW survival. Old growth trees are removed in the name of "regeneration." Feeding ecology in old growth stands should be examined (i.e., time and quality of food offered to nestlings) prior to removal of mature trees. Have feeding studies (i.e., time and quality of food offered to nestlings) been conducted on

density, age, and type of habitat within/nearby the cluster? The vulnerability to lightening strikes within the cluster is increased with the removal of the surrounding large trees just outside the cluster.

Answer: We acknowledge the value of natural regeneration. However, due to the even-aged structure of much of the RCW habitat on refuges, it is important to maintain balance in stand age to provide for future nesting and foraging habitat. Active, planned management will insure adequate distribution of habitats in the age classes needed at the time needed.

E. Land Acquisition

1. P. 6. Paragraph 3, last line. This sentence does not follow from previous information provided. Why should priority for land acquisition be given to just those three refuges? On P. 5, four refuges are listed under the first goal—at the very least, St. Marks Refuge should be included for priority for land acquisition—or a reason stated as to why it shouldn't be included. On the other hand, the commenter suggests that D'Arbonne NWR should be a priority for land acquisition in order to assure adequate habitat for the species there for the short term. How about Santee and Upper Ouachita in that regard as well? These small populations can serve very important genetic reservoir functions—as well as important PR functions. They should be supported rather than written off.

Answer: St. Marks National Wildlife Refuge is part of an adequate land base when coupled with adjacent publicly owned lands. Land acquisition at St. Marks is not a critical need at this time with regard to RCW recovery. The other populations, while significant, are not designated as recovery populations. We will address the need for land acquisition to aid in the recovery of the RCW at each refuge, based on RCW recovery and other management needs.

F. Population Management/Ecology

1. P. 7. The commenter disagreed with the population delineation approach presented on this page. Citing the Forest Service as saying that "it is so" doesn't make it so. If you want "population delineation," then base it on hard science. There are no consistencies here (If you're going to accept the Forest Service's "18 miles," why does the Fish and Wildlife Service then use "20 miles"?), and no scientific justification for what is provided. There are two sides to the coin here that need to be considered. Here the FWS argues that we need delineation of populations to prevent habitat fragmentation—which is

good. But elsewhere, FWS uses the same figures to argue for not protecting "demographically isolated populations"—which in my opinion is bad. Yes, we need to maintain corridors and the integrity of habitat, but no, we should not write off populations or move them just because they happen to be separated by 3.1 miles of unsuitable habitat from other clusters. The figures included in #1 at the bottom of this page are not reasonable considering what we know about the movements of these birds. In addition, with our abilities to move birds, we can as easily maintain these by occasionally moving birds into them as we can move the birds to a larger population. Annual evaluation of subpopulation delineation could appropriately be used to prevent habitat fragmentation—but it should not be used to write off clusters and justify moving birds to concentration centers. Unfortunately there seems to be a tendency to say the former and do the latter.

Answer: We changed the standard of 18 miles in the text from 20 and use the standard identified in the Guidelines to delineate MILs to direct allocation of management and recovery resources. It is not our intention to "write off" populations.

2. P. 16. Flying squirrel control. The commenter feels the use of the term "kleptoparasite" is misleading and a loaded term here. Southern flying squirrels are "secondary cavity users" and do not require an active RCW cavity in which to roost or nest. They often use natural cavities. A cavity that is actively being used by another species is generally left alone unless other cavities are not available. The case against flying squirrels is poorly documented and consists primarily of reports of their use of RCW cavities rather than documentation of reduced RCW fecundity. The commenter has no doubt that occasionally there may be reduced fecundity due to flying squirrels, but evidence to date suggests that it is the exception rather than the rule. We do not need language that encourages the old "predator elimination" mentality. Squirrel presence does not "constitute a history of squirrel problems." We do need a better understanding of the interrelationships between these species.

Answer: Additional research findings now indicate reduced fecundity due to flying squirrels which supports the current text. We believe elevating control of cavity competitors on a cluster-by-cluster basis when we document impacts on RCW productivity.

3. P. 20. First paragraph. The commenter didn't understand the sentence. What does it mean that the Service requires them to "annually establish"? Presumably once recruitment clusters have been established they don't need to be reestablished each year—they're already there. Perhaps the Service means they should "reevaluate" recruitment clusters on an annual basis. If so, this has some drawbacks. Once established, recruitment clusters should not be subject to "change." For example, the commenter can see a stand being labeled a recruitment cluster, then at age 60, have it "delisted" as one so that it can be cut, only to be replaced by a 20-year-old stand. The commenter feels the second paragraph helps to clarify this, but thinks clarification is needed in the first paragraph.

Answer: We made changes in the text to clarify this.

4. P. 22. Translocation of birds for reintroduction to unoccupied territories. The word reintroduction" should be replaced with "introduction."

Answer: We made changes in the text.

5. P. 22. Adult birds should not be moved. HCPs are not a valid excuse for moving them (see Jackson 1997).

Answer: We made clarification in the text. We will respond to opportunities to move adults from private lands through the Habitat Conservation Planning process.

6. P. 22. Juveniles, mid-paragraph. By definition, there can be no such thing as "intra-population demographic isolation."

Answer: We made changes in the text.

7. The use of "important" Service goal and "second" goal as used in the Population Objectives section do not represent the best choice of words? If these "important" goals for the four refuges are the primary or first goal, then those refuges should be managed at MIL 4. Carolina Sandhills NWR should not have the option of selecting a MIL 3 or 4 to assure that the maximum habitat for initial population growth is provided.

Answer: We made changes made in the text. See comment B.8.

G. Harvest Management

1. P. 10. Paragraph 2.

2. The commenter felt log landings should not be adjacent to a cluster either and to better define this. The traditional 200 foot buffer is inadequate to protect a cluster from disturbance such as log landings. Doubling that would certainly be better.

Answer: We are unaware of any factual basis for the recommendation and made no changes.

3. Even if no other access exists, new roads, temporary or otherwise, should not be constructed—or used—through a cluster during the nesting season.

Answer: We revised the text and agree that construction within clusters during the nesting season should not occur unless a Section 7 review and concurrence has been obtained.

4. No log landings are permitted within or adjacent to clusters. Please add: as the damage to tree trunks from bark scuffing in the cluster occurs due to carelessness of the loggers. In addition, the noise and activity can be detrimental.

Answer: We noted the comments and believe the Guidelines provide an adequate explanation.

5. Logging activities (outside of breeding season) near clusters should be allowed only after the RCWs leave the clusters in the morning and should cease prior to the time that RCWs will be returning to the cluster (approximately 1 hour before sundown).

Answer: We noted the comments and believe the Guidelines provide an adequate explanation.

6. If necessary, temporary roads should only be constructed on the edges of the cluster not “through the cluster.” If skidding is allowed, the cavity tree must be absolutely protected from scuff marks or debarking.

Answer: See response G.3.

7. Language should be inserted to the effect that the cavity tree and the area within its drip line should be totally protected from harvesting operations.

Answer: See response G.4.

8. Timber/pulpwood sales at refuges create a negative public image and should be difficult to justify given the foraging/habitat needs of RCWs.

Answer: See response G.4.

9. The draft NWR Guidelines appear to limit the use of clearcutting to areas of <25 acres, except for the Sandhills NWR which could utilize patch sizes of 40 acres if its RCW population expands. Clearcutting may be appropriate when re-establishing longleaf pine on sites currently occupied by off-site pine and/or hardwoods. However, other silvicultural options do exist to convert off-site pines to longleaf. For example, in many of these stands, the Service could reduce the basal area of the pine overstory substantially, and underplant containerized longleaf pine. The advantages of this approach are that: (1) it is more aesthetically pleasing; (2) it requires less disturbance of the ground cover; and (3) a few off-site pines can be left as future potential cavity trees.

Answer: The Guidelines allow, i.e., do not limit, the type of management recommended by the commenter.

10. The draft NWR Guidelines appear to allow clearcutting in longleaf pine stands (page 9 and 29), though page 10 of the FONSI suggests clearcutting will only be used in converting stands back to longleaf pine. The commenter would appreciate clarification of this issue. Clearcutting in longleaf is inappropriate on the National Wildlife Refuges.

Longleaf naturally grows in an uneven-aged manner (Platt et al. 1988. The population dynamics of a long-lived conifer (*Pinus palustris*). The American Naturalist 131[4]: pp. 491–525), and, as has been demonstrated throughout the South, selective timber management in longleaf pine mimics natural stand dynamics and provides excellent RCW habitat. While narrow strip cuts or small patch regeneration can be used, clearcutting should be specifically prohibited in longleaf pine on the refuges. Further, clearcutting in longleaf has the potential to fragment RCW foraging habitat leading to increased energetic requirements for the bird and increased risk of predation.

Answer: We will not generally use clearcutting in regeneration of existing longleaf stands. Even aged regeneration systems most often used (irregular shelterwood and seed tree) require retention of a specified number of trees on each acre of forest in perpetuity.

11. No guidance is provided regarding site preparation, which can be far more disruptive to pine ecosystems than clearcutting itself. Intensive site preparation can severely damage ground cover in fire-maintained, southern pine ecosystems. This is an especially important consideration in longleaf pine and in stands that once were dominated by longleaf but now contain off-site pines. These stands may contain wiregrass or other natural vegetation depending upon past stand history. Such native vegetation is important to maintenance of the natural fire regime in southern pine and, thus, to the maintenance of RCW habitat. It also contributes significantly to the overall floral diversity of the forests. The Service should, therefore, protect such native ground cover. The commenter urges that the draft NWR Guidelines be amended to address protection of native ground cover during site preparation and/or reforestation.

Answer: We agree and revised the text to recommend using the least disruptive means of site preparation.

12. (page 25) Beyer et al, 1995 found that pine basal area (BA) had a high ($R^2 = .96$) correlation with stem density. Requiring a minimum BA in addition to stem density seems to be redundant.

Answer: Guidelines follow the current recovery plan. We believe it would be

most appropriate to effect changes through the revision of the Recovery Plan now underway.

13. (page 28) Minimum rotation ages of 100 years for slash and loblolly pine, especially for poorer sites, could result in mortality and beetle infestation. The May, 1986 Southern Forest Experiment Station publication, “Long-term strategies and research needs for managing southern forests to reduce southern pine beetle impacts” suggests rotations of 40 to 50 years. Refuge managers should be encouraged to set rotations based on prevailing sites and local conditions of beetle occurrence.

Answer: We noted the comments. Managers have the leeway to adjust rotations on a site specific basis, however, rotations of 40–50 years are too short. Sites with rotations of 40–50 years do not typically support populations of RCWs.

H. Prescribed Burning

1. P.10. Prescribed Burning: While prescribed burning may sometimes be used during the breeding season, it should definitely not be used at night in colony areas. Heat and smoke from night fires can force birds from their cavities at a time of day when they cannot see to avoid predators and such fires have been associated with bird loss/cluster abandonment. Burning during the nesting season should be avoided in colony areas under MIL 4 or 5 management.

Answer: RCWs evolved with growing season burns. The Guidelines provide adequate information.

2. P. 26. Prescribed Burning. The second paragraph is a bit distorted. The evidence suggests that natural fire would have been primarily during the breeding season and rarely during the dormant season.

Answer: We noted the comments. The time of the burn is dependent on the habitat objectives to be met.

3. Are dormant season burns really a contributing factor to the decline of RCWs? Would not a more likely cause simply be lack of burns? This sentence seems to require active-growing season burns. Why not recommend late July or August burns to avoid impacts on nesting species like Bachman's Sparrows? This would also avoid impacts on nesting RCWs. Even if this “produces the best understory control” this is not a good option for RCWs.

Answer: We believe that we adequately addressed the concern in the Guidelines.

4. A notation as to the acceptable intensity of the blaze and height of the flames might be needed to protect other trees in the cluster besides the cavity

trees. Often fires are too hot and seem to damage surrounding pines.

Answer: We noted the comments and the text needed no changes.

I. RCW Ecology

1. P. 11. A firm specified range of dates defining the extent of the breeding season is needed with the possibility of extension if needed—such as evidence of late summer or fall breeding. The commenter also disagreed with pine beetle control in a cavity cluster area during the nesting season. These can be important food resources for the birds at this time.

Answer: We added the July 31st date to the Guidelines. There is no justification for a January-February time frame. The currently proposed time frames are adequate although we may need some site-specific review. We would apply and identify group/cluster specific restrictions on a case-by-case basis.

2. P. 14. Inactive Clusters: While inactive clusters should be protected and managed and do have a higher rate of reoccupation, these need to be looked at on a case-by-case basis. The first question to be asked is “Why did abandonment occur?” If abandonment was due to habitat loss (maybe on neighboring private property) or to demographic isolation (real demographic isolation), then management potential and intensity might be different than if abandonment was due to mid-story encroachment.

Answer: We agreed and noted the comments.

3. P. 14. Abandoned Clusters: At Noxubee we have had at least one abandoned cluster reactivated after >nine years. In general, the commenter concurs with recommendations here.

Answer: We noted the comments.

4. P. 14–15. Competition should not be assumed by the presence of these other species. These species are natural components of the RCW's ecosystem and should be treated as such. Technically competition occurs only when one species causes a reduction in the fecundity of the other as a result of the two using the same resource.

Answer: We noted the comments.

5. P. 25. The cookbook approach presented in Henry (1989) will result in differing quality habitats in different geographic locations. The commenter feels that just because it's in print doesn't make it so. The commenter also feels it is also important to not automatically assume that a clan's foraging habitat will be symmetrically centered on the cavity cluster. Shape of the foraging range will depend on many factors: terrain, forest type and age,

neighboring groups, presence of various disturbances, etc. In some cases, foraging habitat may include a substantial amount of non-pine—for example, one group at Noxubee NWR uses cypress extensively.

Answer: See our response to C.3.

J. Cavity Management

1. The commenter disagrees with Harlow's definition of an active cluster as one with two or more cavity trees—saying they have known several colonies with only a single cavity tree with multiple cavities. Granted more than one cavity tree is desired—but doesn't want to write-off or ignore single active nest trees.

Answer: We made changes in the text.

2. P. 20. The number of cavities provided should be the number of “acceptable cavities” provided. Some invariably are unacceptable because of gum, etc.—thus more need to be provided to compensate for those not useable by the birds.

Answer: The changes suggested were not needed since we will not intentionally prepare unacceptable cavities. If we subsequently deem some cavities unacceptable, we will prepare additional cavities.

3. Pileated woodpeckers seem to “attack” RCW cavity entrances following logging operations that remove the large trees near RCW clusters. Have their cavities been removed? Logging operations should consider the cavity trees that other species require to avoid enhancement of cavity competition.

Answer: We made changes in the text and will give priority to hardwoods with cavities.

4. The commenter feels artificial cavities should always be ready and available for use by the biologists. Artificial cavities should be available at the time cavity trees are removed because of pine beetles. There should not be a 24-hour period with no available cavities. If cavity trees for other species are also removed, there is the potential for real cavity competition. Therefore, extra suitable cavities would reduce the likelihood of competition.

Answer: We believe that the Guidelines provide adequate information. Quick installation of cavities may result in installation in trees that will later die as a result of beetle infestation.

5. In the firewood cuts at Noxubee NWR, the cavity trees for other species are marked and protected. This really seems to reduce RCW cavity competition following the removal of hardwood trees near clusters. Leaving cavity trees for other species should be

addressed in the plan. Perhaps a paragraph needs to be added about cavity competition.

Answer: See response J.2.

6. Retention of cavity trees is encouraged. Other surrounding tall/mature trees should also be kept since the retained cavity trees will simply be lightening rods or vulnerable to the wind and not survive.

Answer: See response J.2.

7. In several places, 4 cavities to a cluster are mentioned. Because some cavities are unsuitable/unusable, the commenter firmly believes that each cluster should have a minimum of 6 (or 8) usable cavities available. Usable cavities (ones without flying squirrels, other birds, reptiles, etc.) should always be available; thus, a statement that 2–3 more cavities available than the number of RCWs present in a cluster would better fit the needs of the birds.

Answer: We made changes in the Guidelines to include a recommended 4–8 usable cavities.

8. When a breeding pair has a helper (3 adults in a cluster), the fledging rate is higher. Since many pairs will raise 3 young, a minimum of 6 cavities per cluster will insure maximum reproduction success and survival. In the smaller refuges this extra hour of time for insertion will repay dividends immediately in the survival of more fledglings—which is your way to increase numbers quickly. In addition, capture for translocation is easier when the RCWs roost in inserts rather than 40 to 60 feet in the air in a natural cavity. Those RCWs that have used inserts also more willingly occupy other inserts.

Answer: See response J.7.

K. Southern Pine Beetle Management

1. P. 11. Pine Beetle Suppression/Control: The number of artificial cavities installed should be greater than the number of cavities lost—not all artificial cavities are acceptable. Also, cavities unsuitable to RCWs that are destroyed may force competition with other species. The commenter urges caution and restraint relative to cutting any cavity tree—even with beetles. They know of no case of “control” of southern pine beetle (SPB), etc. that has truly saved RCWs—but know of several cases where control activities have devastated RCW habitats. The commenter would like to see documentation of control “successes relative to RCWs.”

Answer: We believe the Guidelines provide adequate information.

2. P. 27. Pine beetle suppression/control. Where is the evidence that any pine beetle suppression/control efforts have ever saved a RCW cavity tree

cluster? There is a lot of evidence to the contrary. Cutting trees will definitely destroy RCW habitat. SPB are a natural and important part of the ecosystem and should be treated as such on a National Wildlife Refuge. Suppression/control efforts seem to be primarily of economic importance. Saying "spots that are active and growing" is too loose. How big is too big? Time of year is important too. A spot in early spring should be considered differently than one in late fall. The commenter disagrees with the use of pesticides near RCW trees. We now have the ability to provide replacement cavity trees as needed.

Answer: Documentation exists to support statements relative to Southern Pine Beetle control as helping RCWs on National Forest lands in Texas and on the Kisatchie National Forest in LA.

3. Are records kept or studies done on the necessity of removing cavity trees for pine beetle control? Have entire clusters been lost to pine beetle or is this just a fear that perpetuates logging?

Answer: See response K.2.

L. Forest Management

1. P. 14. Snag Retention: The sentence beginning on line 5 is important, yet is in opposition to the Midstory Control section. If you remove all hardwood trees, there will never be dead hardwoods for other species to use.

Answer: Guidelines included a discussion of midstory management including live trees. Removal of all midstory trees was not recommended. We will, therefore, produce/retain snags.

2. P. 20. Last two lines. The commenter hopes that we truly mean "all relict trees"—but suspects that we meant "all relict pines." Clarify.

Answer: We changed the text to reflect that the reference is to relict pines.

3. P. 20. Last sentence. "Reduced to at least 20 BA" is a bizarre way to state this. Do you mean no more than 20 BA" or do you mean "no less than 20 BA"? And how are you defining BA—are you counting only trees >2 inches dbh, 4 inches dbh, 10 inches dbh? Different people measure BA by different criteria.

Answer: We made changes to clarify text.

4. P. 25, bottom. #4. The specifications of stands "greater than 30 years of age and preferably >60 years of age" is too loose. While one would assume management would be for the birds, there are those who would think 30 years of age is adequate. Management on a National Wildlife Refuge should be optimum and not leave room for minimums. As far as the preferable habitat for foraging, the commenter would say >100 would be preferable to

>60 years of age. With uneven age management, some older trees could/should be on every acre of foraging habitat.

Answer: The guidelines are consistent with the recovery plan and we made no changes.

5. P. 26. Pine thinnings. Here the term BA is qualified—"60 to 80 square feet of pine BA greater than 30 years old." It has not been qualified elsewhere and the reader is left not knowing what was intended. This needs to be clarified.

Answer: We noted the comment and considered no changes in Guidelines necessary.

6. P. 26. The commenter questions the statement that timber harvests may still be appropriate when foraging habitat is limiting except in extremely dense stands. The other reasons given here could easily wait until growth has brought the habitat to the point where foraging habitat is not limiting.

Answer: We noted the comments and considered no changes in Guidelines necessary.

7. P. 28 and following relating to silvicultural methods: See the commenters above observations relative to dispersion of older trees. The commenter feels even-aged management is inappropriate in that it does not provide the habitat mosaic and landscape stability that would be provided by uneven-aged management. A scattering of trees across the landscape should be allowed to reach their natural potential longevity.

Answer: We noted the comments and believe the Guidelines will achieve this eventually through recommended management See G.10. Even aged regeneration systems that are used (irregular shelterwood and seed tree) require retention of trees on each acre in perpetuity.

8. P. 33, Clearing of RCW habitat, line 4. The implication here seems to be that clearing of habitat for road construction does not affect the future ability of a refuge to support RCWs. The commenter strongly disagrees. A road could be anything from a logging road to a 6–8-lane interstate—and anything approaching the latter could have very serious negative consequences for RCWs and their habitat. Such consequences could range from loss of acreage of forested area, to the function of a road as a barrier, to mortality of birds as a result of traffic, to reduction in the potential to use prescribed fire in management. The commenter agrees that potential RCW habitat on each refuge should not be reduced, but would add further that the reduction of any habitat on each refuge has the potential to influence the RCW. The commenter

would also add that the tendency to "round" refuges by trading or selling peripheral lands in order to obtain more centralized in-holdings should be avoided. A refuge with a nice—perhaps more easily manageable compact boundary would likely support fewer RCWs than one that is more dispersed. Furthermore, the extension of fingers of habitat away from the refuge offers greater potential as dispersal corridors for birds to and from nearby forested areas on other lands.

Answer: We noted the comments and revised the guidelines.

9. The 40 BA of pine in regeneration areas must be allowed. Because Noxubee has the fourth highest current acreage and has the potential of working in cooperative agreements with several entities, their RCW population should not be relegated to "short-term" viability. Noxubee's third place in planned acreage also places this refuge higher in importance in its contributions to RCW sustainability and recovery.

Answer: We do not understand the comment. We have not relegated Noxubee National Wildlife Refuge to third and have revised the text to reflect this.

10. The commenter cannot understand any plan that removes old trees when these are the very trees that RCW's need the most at this critical time in their recovery. Minimum rotation age seems to be recommended and encouraged. Why is that? Isn't your goal maximum recovery potential? Then, encouragement of an even older rotation would allow trees to serve their function longer and the food potential would be maximized.

Answer: See response L.7. The Guidelines attempt to direct maximization of the number of trees allowed regardless of MIL. Note that a minimum of 6 trees/acre will be left at the time of cutting in perpetuity.

11. Also, page 22 of the FONSI states: "Since most seedling stage, yellow pine species are intolerant of fire, uneven-aged silviculture would be used only for longleaf pine." While most yellow pine species are intolerant of fire, uneven-aged management nonetheless can and should be used with them. Potlatch's Habitat Conservation Plan (approved by the Service), for example, documents and prescribes uneven-aged management in loblolly and shortleaf pine forests. Uneven-aged silviculture in loblolly/shortleaf forests has been well demonstrated elsewhere and has been the subject of numerous publications (e.g., James B. Baker. 1986). The Crossett farm forestry forties after 41 years of selection management. Southern Journal

of Applied Forestry 10:233–237). In addition, the above referenced sentence from the FONSI is not consistent with the draft NWR Guidelines, which specifically sanction the use of unevenaged management in all southern pine types managed for RCWs (see page 9).

Answer: We modified the FONSI to incorporate these comments.

12. (Page 32) The discussion of uneven-aged management does not address the problem of integrating fire with regeneration. As regeneration is standwide and as all southern pines, except long-leaf, are fire intolerant in the seedling and sapling stage, there appears to be no practical method of combining the practice of regular prescribed burning with all-age management, except in the longleaf type. The commenter knows of no research that has studied this problem, nor have they seen a proposed solution to the problem. It should also be noted that the research basis for the current proposals to use all-age management in longleaf pine consists of only 2 tracts, totaling 66 acres and established in 1977–78 (Farrar and Boyer, “Managing Longleaf Pine under the Selection System—Promises and Problems” 6th Biennial Southern Silvicultural Research Conference, Memphis TN, Oct. 1990).

Using uneven aged management will generally require the combined use of fire and alternative methods of competition control.

Answer: We added additional discussion of this issue to the Guidelines.

M. Foraging Habitat

1. Page 25 of the draft NWR Guidelines defines the foraging habitat criteria for the refuges and states that “foraging habitat must be greater than 30 years of age *and preferably* >60 years of age” (emphasis added). This is not consistent with the RCW Recovery Plan which calls for at least 50 acres of foraging habitat per cluster greater than 60 years. Due to no fault of the Service, some areas on the National Wildlife Refuges may not have enough >60 year old habitat to meet the Recovery Plan’s standards. However, the language in the draft NWR Guidelines should clearly state that at least 50 acres of >60 year old habitat per cluster will be preserved whenever possible. Moreover, if a sufficient amount of >60 year old habitat is not available in a given refuge but can be produced, the refuge should immediately adjust harvest schedules to produce the requisite foraging habitat (the only possible exceptions are when dealing with southern pine beetle

attacks or when undertaking management designed to achieve other ecological objectives).

Answer: We made changes in the text.

2. (page 25) The requirement of 6,350 stems >10”DBH within ½ mile of the cluster is based on a single unpublished study by Hooper and Lennartz. The commenter knows of no peer-reviewed and published study which supports this figure. Recent peer-reviewed research raises serious doubts as to the validity of this study and suggests that this number may be in excess of the density “optimum” to clan vigor, (James et al. 1997, Beyer et al. 1996, Hooper and Lennartz 1995, DeLotelle and Epting 1992, Wood et al. 1985). See also attached reformulation and re-analysis of the Hooper and Lennartz (1985) data which indicates a critical equivalent stem density of 2500–3500 stems rather than 6350.

Answer: We wrote the Guidelines to be consistent with the recovery plan. See also response I.5.

Authority

The authorities for this action are the Endangered Species Act (16 U.S.C. 1531 *et seq.*), The National Environmental Policy Act (42 U.S.C. 4321–4347) and the National Wildlife Refuge System Improvement Act of 1997 (Pub.L. 105–57 to be codified at 16 U.S.C. 668dd *et seq.*).

Dated: January 11, 1999.

Sam D. Hamilton,
Regional Director.

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BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–090–1220–00]

Grand Gulch/Cedar Mesa, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of recreation fee structure, allocation system and prohibitions for Grand Gulch/Cedar Mesa in San Juan County, Utah.

SUMMARY: Beginning March 1, 1999, the Bureau of Land Management (BLM) will implement provisions of the 1993 Grand Gulch Plateau Cultural and Recreation Area Management Plan concerning an advanced reservation system, use limits, and permit fees. The permit area involves recreation use of the following canyons on Cedar Mesa including Grand Gulch Primitive Area, Fish, Owl, McCloyd, Road, Lime and Slickhorn Canyons. Use on the mesa tops of Cedar

Mesa will not be regulated at this time. Permits will be required and fees charged from March 1 to November 30 of each year. The advanced reservation portion of the permit system will be in effect during the primary visitation season only, from March 1 to June 15, but may be extended in the future as need dictates. Advanced reservations will be accepted, for this time period, by phone or mail to the Monticello BLM office starting January 1, 1999. Day use of the canyons will require a day use pass or multi-day use pass (7 days), for which a fee is charged, from March 1 to November 30.

The permit requirement, because it is based on an allocation of the number of people per trailhead (Grand Gulch) or per canyon (other Cedar Mesa canyons), will help to decrease in-canyon use during the primary visitation season, and to monitor use at other times of the year.

Fees collected from individual, non-commercial visitors will be used to augment protection of Cedar Mesa’s outstanding cultural and primitive recreation values. Notice is also given that campfires will be prohibited within any canyon on Cedar Mesa.

SUPPLEMENTARY INFORMATION: Cedar Mesa has long been identified with world class Ancestral Puebloan cultural remains and excellent day hiking and backpacking opportunities. Grand Gulch itself has been managed to protect these values since 1970 when the Secretary of the Interior designated it as a Primitive Area. The other canyons were protected within the Cedar Mesa Area of Critical Environmental Concern in the 1991 San Juan Resource Management Plan (RMP). In recognition of increasing recreational visitation and declining resource conditions, the BLM developed the Grand Gulch Plateau Cultural and Recreation Area Management Plan in 1993. In 1991, individual self-serve permits, advanced reservations for pack stock and larger foot parties, and fees were first established for Grand Gulch. The actions outlined in this **Federal Register** Notice are a continuation and implementation of direction established in the Grand Gulch Plateau Plan.

The fee for either day use or overnight non-commercial recreation use of the Cedar Mesa Canyons must be paid before entering. The day use fee (\$2/person/day) can be paid at the Kane Gulch Ranger Station or at fee tubes placed at the trailheads. A multi-day use pass (\$5/person for a 7 day pass) may be obtained at Kane Gulch or through the Monticello BLM office. Advanced overnight reservations (\$8/person/trip) may be made through the Monticello

BLM office, and may be paid for by credit card, personal check or money order. Overnight walk-in permits are available only at Kane Gulch for \$5/ person/trip. Groups of 8–12 and pack and saddle stock supported visitors still require an advance reservation permit during the permit season, obtainable from the Monticello BLM office.

Due to concerns for public safety, resource damage and cultural resources protection, campfires will be prohibited within any canyon on Cedar Mesa. Campfires may still be used on the mesa tops of Cedar Mesa.

Failure to pay any fee, failure to obtain a permit, or operating with an expired permit on Cedar Mesa will make that person responsible under resource and land damages identified in 43 CFR 9268.3 and is punishable under 43 CFR 8372.0–7 pursuant to the Federal Land Policy and Management Act of 1976, and other laws when applicable.

FOR FURTHER INFORMATION CONTACT: Philip Gezon, Outdoor Recreation Planner, Bureau of Land Management, Monticello Field Office, P.O. Box 7, Monticello, Utah 84535 (435) 587–1519.

Dated: January 15, 1999.

G. William Lamb,

Utah State Director.

[FR Doc. 99–1693 Filed 1–25–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Solid Minerals Operational Model (OMB Control Number 1010–0120), which expires on June 30, 1999.

FORM: None.

DATES: Written comments should be received on or before March 29, 1999.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room

A613, Denver Federal Center, Denver, Colorado 80225; e-mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information which expires June 30, 1999. We are requesting OMB approval for a 3 year extension of this existing collection authority. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Secretary of the Interior is responsible for the collection of royalties from leases producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws.

MMS performs these royalty management functions for the Secretary. When a company or an individual enters into a contract or lease to develop, mine, and dispose of Federal or Indian minerals, that company or individual (the respondent) agrees to pay the appropriate royalty due based upon gross proceeds received from the sale of production from the leased lands. Royalty rates are specified in the lease agreement.

Specific lease language varies; however, respondents agree by the lease terms to furnish statements providing the details of all operations conducted on a lease and the quantity and quality of all production from the lease at such times and in such form as the Secretary may prescribe. Rules require respondents to provide accurate, complete, and timely reports for all minerals produced, in the manner and form prescribed by MMS in 30 CFR part 210, subpart E, and part 216, subpart A.

In order to facilitate the collection of information listed above, MMS currently requires the submission of eight separate forms. Respondents are

also required to resubmit each of these forms to correct any errors which may have occurred on previous submissions of required information. These eight forms are:

- Form MMS–2014, Report of Sales and Royalty Remittance—payors report all royalty and lease-level transactions.
- Form MMS–4030, Payor Information Form (PIF)—establishes and maintains payor accounts required for processing Form MMS–2014.
- Form MMS–4050, Mine Information Form (MIF)—establishes and maintains mine-level production reporting.
- Form MMS–4051, Facility and Measurement Information Form (FMIF)—establishes and maintains facilities in the volume-tracking system including identifying key sales/transfer measurement points that are required to track production and identify all secondary processing and remote storage facilities.
- Form MMS–4059–A, Solid Minerals Operations Report, Part A (SMOR–A)—identifies the quantity and quality of all raw material produced from each Federal or Indian lease; specifies the disposition of those raw materials including sales, transfers, and adjustments; and tracks raw material inventories.
- Form MMS–4059–B, Solid Minerals Operations Report, Part B (SMOR–B)—allocates sales from a secondary processing or remote storage facility back to individual Federal or Indian leases within a mine.
- Form MMS–4060–A, Solid Minerals Facilities Report, Part A (SMFR–A)—provides detailed information on a secondary processing facilities' inputs/ outputs.
- Form MMS–4060–B, Solid Minerals Facilities Report, Part B (SMFR–B)—shows a secondary processing or remote storage facility raw material receipts, production, inventory, and disposition.

In April 1997, we decided to conduct an in-depth reengineering of all our core business processes, and we decided to proceed with three operational models (offshore, onshore, and solid minerals) that will test the proposed reengineered business processes. The solid minerals operational model will initially include reporting from 15 mines owned by four major coal mining companies and one major sodium mining company; the companies volunteered to participate in the project.

In the solid minerals operational model, we will focus on the collection of production, royalty, and valuation data, while streamlining reporting requirements. We will test three reporting formats in the solid minerals operational model. The participating

companies will submit "parallel" reporting formats during the operational model. They will continue to submit all currently required forms and will also submit the three new reporting formats. We anticipate that these three new reporting formats will replace the eight currently submitted forms listed above.

We have combined six of the current forms into one monthly submission titled Form MMS-4430, Production and Royalty Report. We have combined two forms, Forms MMS-4060-A and MMS-4060-B, into a quarterly information collection titled Form MMS-4431, Facility Report. We have also developed a new quarterly Form MMS-4432, Marketing Profile Report, to obtain necessary contract information from respondents. The profile report will alert us to possible compliance problems at the beginning of the audit process, thereby allowing us to provide more timely resolution.

We will collect the production, royalty, and valuation data using information technology. The information collected will be used to support:

- **Distribution and Disbursement.** We must match the royalty payment submitted on Form MMS-2014 to the Production and Royalty Report, maintain lease accounts of payments, and ensure the distribution of data and disbursement of monies to our revenue recipients.
- **Compliance and Asset Management Processes.** We must determine areas not in compliance for a lease or mine sooner than the current processes allow. The Production and Royalty Report format is designed to give us the basic volume and valuation information necessary to begin these compliance activities so that we may compare it to the Facility Report and Market Profile Report formats.
- **Monitoring Allowances and Off-site Activity.** We must monitor allowance deductions and off-site inventory and sales. Companies maintain electronic data files of this information as a normal course of business. We propose to download the data from these company-maintained files to our compliance data systems. Our intent is to minimize the information collection burden on industry respondents as well as ourselves.
- **The Bureau of Land Management (BLM) Production Verification, Diligent Development, and Recoverable Reserves Calculations.** We must make facility data available on-line to all BLM, the Bureau of Indian Affairs, Tribes, and State Audit offices. During the operational model, we will refine the data provided on the Facility Report to

ensure BLM can perform these processes, including monitoring plant efficiencies, maximum recovery and secondary product inventories.

- **Compliance and Asset Management Processes.** We will require the submission of supplemental information (Marketing Profile Report) be submitted to facilitate the compliance aspect of our reengineering efforts. The Marketing Profile Report information will be an integral part of the Compliance and Asset Management process being developed in the operational model. We will use this information to verify royalty value and augment monitoring and detection of compliance problems on those mines. This information will only be collected from those reporters whose royalties are based on gross proceeds or who sell products beyond the mine site.

To determine a reasonable hourly reporting burden using the new reports of the operational model, we started with the current reporting burden for the eight forms and, based on the elimination of some reporting functions and the corresponding reduction in reporting burden, we calculated the reduced burden for the three new reports. Approximately 90 coal mines currently report Federal lease production, and we receive an average of 12,000 coal financial data lines annually, 11 lines per month per reporting mine. We estimate that 2 minutes are spent on each line that is reported electronically, or 22 minutes for reporting royalty data to MMS per month per mine. We also estimate that a company spends 1.5 hours per month preparing and submitting their production data. Therefore, the reporting burden for both the financial and production data for the current system is approximately 2 hours per month per mine.

Using the new Production and Royalty Report, a respondent's reporting burden will be reduced. Adjustments made to correct previously reported information will be "netted" so that only one line will be reported rather than the two lines—the original, incorrect line and the new, corrected line—that are currently reported. Adjustment lines constitute 76 percent of the financial data submitted. Since respondents will no longer need to "back out" a reported line, their reporting burden for adjustment lines is reduced by one-half. The reporting burden is again reduced because only production by lease is reported, eliminating inventory calculations and transfer amounts which will be calculated automatically. We estimate that the reporting burden for both the

financial and production data for the solid minerals operational model will be reduced to 1 hour per month per mine.

The Facility Report requires information that is readily available to each mining company from their files, and we estimate that the reporting burden is 15 minutes per month per mine.

The Marketing Profile Report requires up to 27 lines of input each quarter, although much of the information will generally not change from one quarter to the next. The information required is readily available to each mining company from their own files, and we estimate that the reporting burden is 45 minutes to fill out this form each quarter or 15 minutes per month per mine.

The total annual reporting burden associated with these three new reports for the solid minerals operational model (5 companies reporting on 15 mines) is 270 hours (1.5 hours per month $\times$ 12 months $\times$ 15 mines).

Dated: January 20, 1999.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 99-1686 Filed 1-25-99; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

Change in Noise Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: As part of its implementation actions to achieve the objectives of Public Law 100-91 regarding the substantial restoration of natural quiet at Grand Canyon National Park (GCNP), including current rulemaking [and environmental assessment actions], the National Park Service (NPS) is working cooperatively with the Federal Aviation Administration (FAA) on further actions to aid that restoration as well as planning for the development of a comprehensive noise management plan for air tour operations over GCNP. NPS previously determined that in order to substantially restore natural quiet to GCNP, at least 50 percent of the park must achieve "natural quiet" (i.e., no aircraft audible) for 75 to 100 percent of the day. The reasonableness and validity of this standard was upheld by the United States Court of Appeals for the District of Columbia in 1998.

In previous environmental assessments related to GCNP

rulemaking since 1996, a single threshold of the average natural ambient sound level plus 3 decibels was applied through the FAA Integrated Noise Model to estimate the percent of time that air tour aircraft would be noticeable under each action alternative. In light of its experience and additional information, NPS is now refining its methodology used to evaluate the achievement of its natural quiet restoration standard.

Particularly, the NPS refinements contemplate a two-zone system for evaluating achievement of the natural quiet standard. The zones reflect more accurately the differences in geography, facilities development, and regulatory restraints of specific geographic areas of GCNP and allow noise thresholds to be tailored to the circumstances of each zone. The refinements apply only to evaluation methodology; the standard for substantial restoration of natural quiet remains unchanged.

This notice seeks public comment on the refinements to NPS's evaluation methodology, i.e., the two-zone system and the noise thresholds to be applied to the zones. Additional matters concerning the GCNP comprehensive noise management plan for air tour operations will be addressed in subsequent public notices, including, but not limited to, a model validation study and a noise monitoring strategy.

DATES: Comments must be received on or before March 20, 1999.

ADDRESSES: Comments may be delivered or mailed, in triplicate, to, the National Park Service, attention: Tom Hale, National Park Service, Grand Canyon Science Center, P.O. Box 129, Grand Canyon, Arizona 86023.

FOR FURTHER INFORMATION CONTACT: Tom Hale (520-556-7219).

SUPPLEMENTARY INFORMATION

Background

Section 3 of Public Law 100-91 (Overflights Act) states that noise associated with aircraft overflights at Grand Canyon National Park (GCNP) is causing a significant adverse effect on the natural quiet and the experience of GCNP. The statute directed the Secretary of the Interior (Secretary) to make recommendations to the Administrator of the FAA for the development of a plan for management of air traffic in the air space above GCNP for the purposes, among other matters, of providing substantial restoration to the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight. The FAA is charged with implementing these

recommendations without change unless it determines that they would adversely affect aviation safety.

A plan intended to achieve these purposes was established by FAA in 1988 with the adoption of Special Federal Aviation Regulation (SFAR) No. 50-2. SFAR 50-2 established minimum altitudes, four flight free zones, and special routes for commercial air-tour operators over the park.

In 1994, as required by the Overflights Act, the Secretary submitted to the Congress a report, developed by NPS, regarding overflights over units of the national park system in general. The "Report on the Effects of Aircraft Overflights on the National Park System" (Report), reviewed the effectiveness of SFAR 50-2 and offered a new set of recommendations for further regulatory action by FAA. The Report concluded that SFAR 50-2 had not succeeded in substantially restoring natural quiet to GCNP noting, particularly, that the level of commercial air-tour operations (and consequent aircraft noise) at GCNP had increased since 1988 and was likely to continue to increase under SFAR 50-2. The Report recommended simplification of the existing commercial air-tour route structure, expansion of flight free zones, phased implementation of quieter aircraft technology, consideration of limits on aircraft operations or noise, and the imposition of temporal curfews on commercial air-tour overflights.

In addition, the Report determined the threshold value for the substantial restoration of natural quiet: 50% or more of the park must achieve "natural quiet" (i.e., no aircraft audible) for 75-100 percent of the day. "Natural quiet" is a park resource defined as the natural ambient sound conditions found in national park units. It describes the natural sound conditions found in national parks when people with normal hearing can perceive nothing but the sounds produced by the natural and cultural components of the parks.

On April 22, 1996, in an Executive Memorandum, the President required the Secretary of Transportation, in consultation with the Secretary of the Interior and the National Park Service, to issue regulations "to place appropriate limits on sightseeing aircraft over the Grand Canyon National Park to reduce the noise immediately and make further substantial progress toward restoration of natural quiet, as defined by the Secretary of the Interior, while maintaining aviation safety in accordance with the Overflights Act (Pub. L. 100-91)."

In response, on December 31, 1996, the FAA published a Final Rule

amending part 93 of Federal Aviation Regulations by adding a new subpart (Subpart U) to codify the provisions of Special Federal Aviation Regulation (SFAR) 50-2, Special Flight Rules in the Vicinity of GCNP (61 FR No. 252, pages 69302-69333) modifying the dimensions of the GCNP Special Flight Rules Area; establishing new and modifying existing flight corridors and flight free zones; establishing reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area; restricting flights in Zuni and Dragon Corridors during certain time periods (curfews); and limiting the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area (cap). Subsequently, it became necessary to delay implementation of several of the rule's provisions to continue consultation with Indian tribes on routes and address problems with the cap on sightseeing operations. As a result, the reporting requirements, curfews, and cap on aircraft numbers are in effect, but modification of the Special Flight Rules Area and the flight free zones will not be completed until decisions on air tour routes can be finalized.

In addition, on December 31, 1996, FAA published a notice of a proposed rulemaking regarding additional noise limitations for aircraft operations in the vicinity of GCNP (61 FR No. 252, pages 69334-69355). Then, on December 31, 1996, FAA issued proposed air-tour routes for GCNP (61 FR No. 252, pages 69356-69357). These latter actions have not been finalized. The FAA has initiated other actions since that time, notably delaying implementation of certain sections of the final rule to allow the FAA and the Department of Interior to consider comments and suggestions to improve the proposed route structure. Complete background information on these and other actions taken by the FAA may be found in the **Federal Register** Vol. 63, No. 234, pages 67544-67546.

The preamble to Subpart U, in addition to discussing the need for the rule, states that FAA and NPS are committed to the development of a noise management plan for GCNP related to air tour operations. This plan is intended to provide for a more adaptive management approach, full resolution of all monitoring and modeling issues, additional public input, and the provision of improved incentives to invest in noise efficient aircraft. The GCNP noise management plan is intended to ensure development of a flexible and adaptive approach to noise mitigation and management, and,

among other matters, will address validation and documentation of the most effective way(s) to monitor and model aircraft noise in GCNP.

Discussion

As part of its preparation for developing the GCNP air tour noise management plan, the NPS has reexamined the current methodology for evaluating the substantial restoration of natural quiet in GCNP.

As previously noted, the NPS determined in 1994 that the threshold for substantially restoring natural quiet to GCNP required that 50% or more of the park must achieve natural quiet (i.e., no audible aircraft), for 75–100% of the day.

The methodology previously used to evaluate the achievement of the substantial restoration of natural quiet under this standard treated the entirety of GCNP as one area and applied a single noise threshold to the entire area. The threshold used was the average natural ambient (multiple levels based on vegetative cover from the best available acoustic data set) plus 3 decibels, otherwise known as noticeability. Noticeability is defined as the level at which visitors engaged in activities other than contemplation of the national park are likely to hear aircraft noise. This threshold was used in calculating the percentage of the day and the percentage of GCNP that aircraft noise would be noticeable. And the threshold was used irrespective of differences in geography, development circumstances, or regulatory restraints of particular areas of the park, and, irrespective of the fact that it might be appropriate to apply different noise thresholds to different parts of GCNP to reflect such differing circumstances.

Based on further review and the experience of NPS and FAA in applying the current aircraft noise evaluation methodology, the NPS believes the current methodology should be refined to take into account the characteristics of specific areas of GCNP and to utilize different noise thresholds where appropriate.

Particularly, NPS is refining the current evaluation methodology by incorporating a two-zone geographic system with different noise thresholds applicable to the circumstances of each of the two zones.

In this connection, NPS, acting for the Secretary, is charged with the management of areas of the National Park System. It is the responsibility of NPS to preserve park areas and to provide for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations.

Preserving and maintaining natural and cultural “soundscapes” in areas of the national park system is a component of this responsibility. A concern for the achievement of the “substantial restoration of natural quiet” in GCNP is analogous to concerns regarding the preservation of wildlife, historic structures or ecosystems that are significant features of parks. As part of its mandate, the NPS seeks to make available the opportunity to experience the natural features of park areas with as little evidence of human activity, visible or audible, as possible.

All of the larger natural area parks are zoned by NPS for differing uses and differing levels of resource protection based upon park purpose and other mandates, and differing levels of development to serve visitors. In general, a park’s frontcountry has facilities, roads, parking lots and commercial services to provide necessary and appropriate visitor needs, while the backcountry, whether a wilderness area or not, has only trails for use by visitors.

A similar planning methodology is now proposed to be adopted by NPS with respect to the substantial restoration of “natural quiet” at GCNP. Under this methodology for Grand Canyon, Zone One would be composed of (1) the developed areas of GCNP as identified in GCNP’s 1995 General Management Plan, encompassing, on the South Rim, the area from approximately Desert View to Hermit’s Rest, and, on the North Rim, the developed area on Bright Angel Point; (2) the Sanup Flight Free Zone; and (3), the Marble Canyon Sector. Zone One comprises approximately one-third of the area of GCNP.

The developed areas included in Zone One for this purpose are generally those delineated as “Developed Areas” on the Management Zones map in the 1995 GCNP General Management Plan. Exceptions include (a) Tuweep and Phantom Ranch which are excluded from Zone One because they are managed to more primitive standards than the other developed areas; and (b) the North Rim paved roads because they are surrounded by proposed wilderness areas and because the roads and utility corridors are too narrow (approximately 600 feet) for practical noise and impact modeling on the scales involved. Only the Bright Angel Point developed area is included in Zone One on the North Rim. For Zone One on the South Rim, the system of developed areas, roads, and utility corridors is blocked into a single contiguous unit. This unit extends from the rim to the southern boundary of

GCNP and from Hermit’s Rest to Desert View.

The North and South Rim developed areas as described above are included in Zone One in recognition of the greater amount of human activity and consequent more limited expectations of natural quiet in these areas as opposed to undeveloped areas of the park. The area west Whitmore Rapid is included in Zone One because the relatively low designated aircraft ceiling of the Sanup Flight-free Zone (7999 feet, MSL), needed for safe transit of the area by general aviation, limits the ability of the flight-free zone to provide acoustic protection to this area.

The Marble Canyon Sector is included in Zone One because the narrowness of Marble Canyon and the SFRA boundary effectively preclude acoustic protection of the canyon floor and river area, and because it is not feasible to establish a flight-free zone while still providing for safe transit of the area by general aviation traffic.

Zone Two would encompass, in a large contiguous area in the center of GCNP, approximately two-thirds of the park’s area. The two zones are shown on the map accompanying this notice.

Under this proposal, the noise threshold for Zone One is set at 3 decibels above the average natural ambient sound levels (A-weighted) found to exist in these areas of the park as determined by previous scientific acoustic measurement studies. This is the same as the single standard used in previous evaluations (i.e., noticeability).

The threshold for Zone Two is proposed to be different because data collected at GCNP indicates that technicians monitoring the sound environment identified aircraft noise levels at levels significantly below A-weighted natural ambient levels. These technicians, tested to have normal hearing, were listening actively to note the source of noise levels as the source changed over time, noting, for example, whether the noise source was the natural ambient environment or one or more of a variety of human sources such as aircraft or vehicles. The level at which an attentive listener, such as these technicians, can begin to hear a noise source is the only objective point from which the amount of time the source is audible can be measured; it incorporates the masking level natural ambient environment, including wind. Park visitors, sitting quietly but actively seeking to experience the natural quiet and solitude of the park, were key people that NPS decision-makers had in mind concerning the phrase “no aircraft audible” in the natural quiet standard. However, with a noise threshold of 3

decibels above average natural ambient sound levels, the NPS learned that such persons could potentially hear aircraft as much as 100% of the time at levels lower than that threshold. The NPS considers this standard to be inappropriate for the whole park.

The technicians identified aircraft noise at A-weighted levels of 8–12 decibels below the average A-weighted natural ambient sound levels, depending upon aircraft type. Therefore, the threshold for Zone Two is set at 8 decibels below the average ambient sound levels, a threshold which reflects the point at which aviation noise can be heard (i.e., audible) by ground visitors seeking to experience the natural and cultural soundscapes of national parks.

The legislative history of Public Law 100–91 confirms that the purpose of

flight-free zones is to provide a location where visitors can experience the park essentially free from aircraft sound intrusions. The aerial extent of these zones will also be adequate to ensure that sound from aircraft flying adjacent is not detectable from most locations within the zones. It is within these flight-free zones that substantial restoration of natural quiet is expected to be achieved.

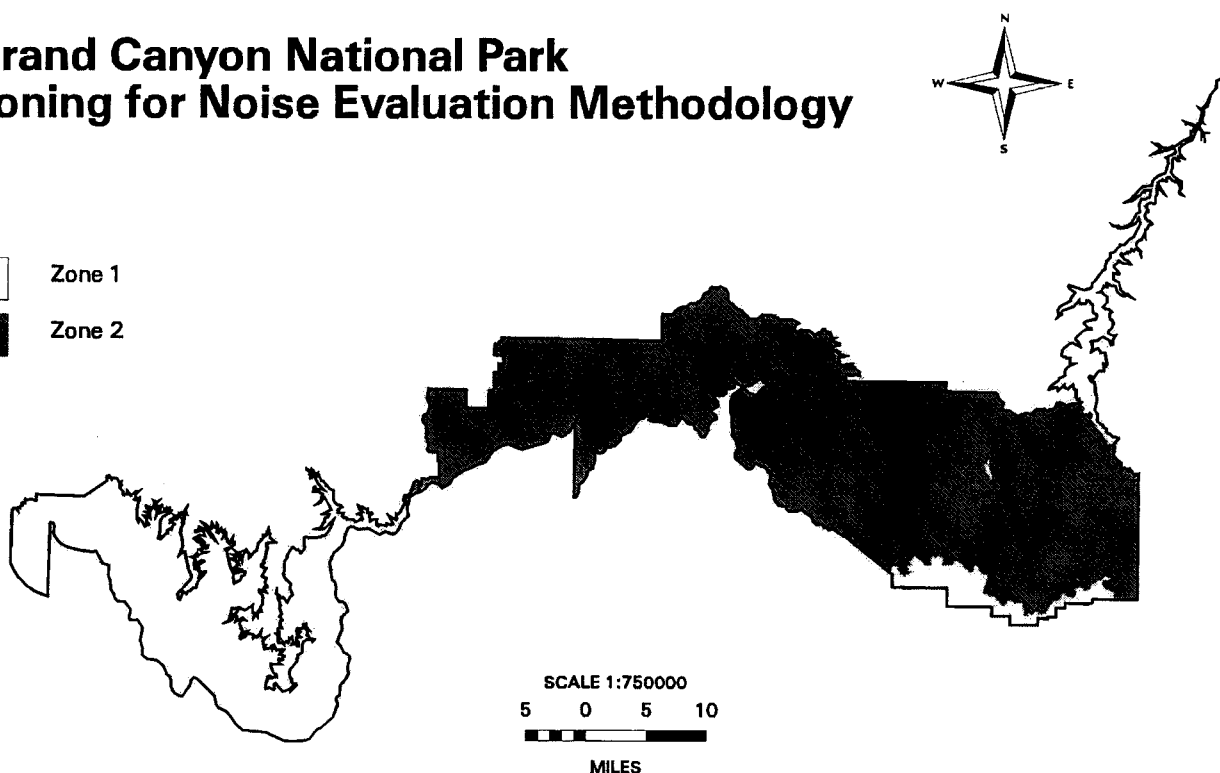
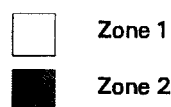
NPS considers that adoption of these changes to its noise evaluation methodology for GCNP will result in more accurate and realistic means to evaluate the substantial restoration of natural quiet in GCNP consistent with the NPS Report to Congress. The Report defined the substantial restoration of natural quiet using a noise evaluation

standard based upon the sound level at which a person with normal hearing can hear aircraft noise.

The NPS and the FAA will use this refined methodology in future evaluations of the substantial restoration of natural quiet at GCNP, unless science or public planning processes provides better approaches. These refinements of the evaluation methodology may make more challenging the efforts to achieve the substantial restoration of natural quiet in GCNP. However, the use of the two noise thresholds and two geographic zones will better achieve the preservation of the GCNP resources and visitor experiences the NPS is charged to protect.

Jaqueline Lowie,
Deputy Director.

Grand Canyon National Park Zoning for Noise Evaluation Methodology



[FR Doc. 99–1685 Filed 1–25–99; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received

by the National Park Service before January 16, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written

comments should be submitted by February 10, 1999.

Carol D. Shull,
Keeper of the National Register.

ALABAMA

Autauga County

Bell House, 550 Upper Kingston Rd.,
Prattville, 99000150

Clarke County

Thomasville Historic District (Clark County
MRA), Roughly bounded by AL 43, 1145

W. Front St., Wilson St., and 818 W. Third St., Thomasville, 99000151

Jefferson County

Roebuck Springs Historic District, Roughly off of Blountsville Cty Rd., Birmingham, 99000149

Morgan County

New Decatur—Albany Historic District (Boundary Increase), 136 First Ave. NE, Decatur, 99000148

ARKANSAS

Hot Spring County, Pine Bluff Street Historic District, Pine Bluff St., roughly from Bois D'Arc to McNeal St., Malvern, 99000154

Independence County

Hulsey Bend School, Freeze Bend Rd., 0.7 mi. E of jct of AR 122 and AR 14, Oil Trough vicinity, 99000153

Lincoln County

Star City Commercial Historic District (Civil War Commemorative Sculpture MPS), Roughly along Jefferson and Bradley Sts., Star City, 99000152

Miller County

Wadley, J.K., House, 618 Pecan St., Texarkana vicinity, 99000155

Sharp County

Graham, Fred House (Hardy, Arkansas MPS), US 62, W of jct. with Springwood Rd., Hardy, 99000157
Tucker, Carrie, House (Hardy, Arkansas MPS), US 62/63, E of jct. with Echo Ln., Hardy, 99000156

CALIFORNIA

San Diego County

Georgia Stree Bridge—Caltrans Bridge, Georgia St. and University Ave., bet. Florida St. and Park Blvd., San Diego, 99000158

FLORIDA

Volusia County

Daytona Beach Bandshell and Oceanfront Park Complex (Daytona Beach MPS), Ocean Ave., N of jct. of Main St. and Atlantic, Daytona Beach, 99000159

GEORGIA

Emanuel County

First Methodist Episcopal Church, Jct. of Third Ave. and Third St., Stillmore, 99000160

Fulton County

Midtown Historic District, Roughly bounded by 10th St., Ponce de Leon Ave., Piedmont Ave., and Lakeview Ave., Atlanta, 99000161

ILLINOIS

Cook County

Building at 900 West Lake Street, 900 W. Lake St., Chicago, 99000163
Lakewood Balmoral Historic District, Bounded by Magnolia, Wayne, Foster, and Bryn Mawr Aves., Chicago, 99000162

Kane County

Country Tea Room, 14N630 IL 25, East Dundee vicinity, 99000164

Montgomery County

Litchfield Public Library (Illinois Carnegie Libraries MPS), 400 N. State St., Litchfield, 99000165

INDIANA

St. Joseph County

Bergan, W.N.—J.C. Lauber Co. Building (East Bank MPS), 502–504 E. La Salle St., South Bend, 99000180

East Washington Street Historic District (East Bank MPS), Roughly between E. Colfax and E. Washington Sts., and St. Louis Ave. and Eddy St., South Bend, 99000182

Egan, Maurice, House (East Bank MPS), 1136 N. Notre Dame Ave., South Bend, 99000175

Fire House No. 3 (East Bank MPS), 219 N. Hill St., South Bend, 99000177

Fire House No. 7 (East Bank MPS), 803 N. Notre Dame Ave., South Bend, 99000170

Hoban, Martin, House (East Bank MPS), 205 N. St. Louis Blvd., South Bend, 99000171

Holden, Mabel, House (East Bank MPS), 1104 N. Notre Dame Ave., South Bend, 99000176

Howard Park Historic District (East Bank MPS), roughly between E. Jefferson and Wayne Sts., N. Eddy and the St. Joseph R., South Bend, 99000169

I and M Electric Co. Building—Transformer House and Garage (East Bank MPS), 401 E. Colfax and 312 E. La Salle Sts., South Bend, 99000173

La Salle Street Bridge (East Bank MPS), La Salle St., over the St. Joseph R., South Bend, 99000181

McCormick, Charles, Building (East Bank MPS), 526–532 E. Colfax Ave., South Bend, 99000178

Singer Manufacturing—South Bend Lathe Co. Historic District (East Bank MPS), Madison St. between N. Niles Ave. and St. Joseph R., South Bend, 99000174

Sommerer House (East Bank MPS), 415 Parry St., South Bend, 99000172

St. Joseph School (East Bank MPS), 210 N. Hill St., South Bend, 99000179

LOUISIANA

Ascension Parish

Fort Butler, Address Restricted, Donaldsonville vicinity, 99000183

Lafourche Parish

Nicholls, Francis T., Junior College Main Building, 906 LA 1 E, Thibodaux, 99000184

MASSACHUSETTS

Barnstable County

Universalist Society Meetinghouse, 3 River Rd., Orleans, 99000186

Dukes County

Gay Head—Aquinnah Town Center Historic District, South Rd. and Church St., Aquinnah, 99000187

Worcester County

Bancroft Memorial Library, 50 Hopedale St., Hopedale, 99000188

Upton Town Hall, 1 Main St., Upton, 99000185

MINNESOTA

Morrison County

Stanchfield Logging Camp (Commercial Logging in Minnesota MPS) Address Restricted, Little Falls vicinity, 99000190

St. Louis County

Bull-of-the-Woods Logging Scow (Shipwrecks of Minnesota's Inland Lakes and Rivers MPS) Address Restricted, Morse Township vicinity, 99000189

Scott County

Inyan Ceyaka Otonwe, Address Restricted, Louisville Township vicinity, 99000191

NEW JERSEY

Passaic County

Paterson Downtown Commercial Historic District, Roughly bounded by Patterson, Ward and Gross Sts., and Hamilton Ave., Paterson, 99000192

NEW YORK

Cattaraugus County

First Congregational Church of Otto, 9019 Main St., Otto, 99000194

New York County

Houses at 1026–1028 Fifth Ave., 1026–1028 Fifth Ave., New York, 99000197
Prince George Hotel, 10–20 E. 28th and 17–19 E. 27 Sts., New York, 99000195

Steuben County

Northrup Hill School District 10, Learn Rd., Rathbone, 99000196

Westchester County

Lord and Burnham Building, 2 Main St., Irvington, 99000193

NORTH CAROLINA

Robeson County

Maxton Historic District, Roughly bounded by Graham St., Martin Luther King Dr., McCaskill St., and Florence St., Maxton, 99000199

Rowan County

Grubb—Sigmon—Weisiger House, 213 McCoy Rd., Salisbury, 99000198

SOUTH CAROLINA

Anderson County

Shirley, Obediah, House, Bagwell Rd., Honea Path, 99000201

Marlboro County

James, William Apollos, House, 208 N. Dennis Ave., Bishopville, 99000200

SOUTH DAKOTA

Brookings County

Brookings University Residential Historic District, Roughly bounded by Harvey Dunn St., Medary Ave., Sixth St., and Main Ave., Brookings, 99000210

Buffalo County

Bank of Buffalo County, Main St., Gann Valley, 99000206

Duncan Church, SW of Crow Creek, 2 mi. S of Cty line, Gann Valley vicinity, 99000207
Viereck Barn, 1.5 mi. W of SD 45, Gann Valley vicinity, 99000211

Fall River County

Petty House, 201 N. Third St., Hot Springs, 99000202

Kingsbury County

Ruth, Thomas, H. House, 209 Poinset Ave., DeSmet, 99000212

Lake County

St. Williams Catholic Church, Third St., Ramona vicinity, 99000203

Lawrence County

Spearfish Post Office (Old) (Federal Relief Construction in South Dakota MPS), 526 Main St., Spearfish, 99000205

Minnehaha County

Old Courthouse and Warehouse District (Boundary Increase), Roughly bounded by N. Dakota Ave., 4th St., the Big Sioux R., and 7th St., Sioux Falls, 99000204

Walworth County

Mobridge State Bank, 123 Main St., Mobridge, 99000208

TENNESSEE

Montgomery County

Dunlop Milling Company (Clarksville MPS), 1138 Franklin St., Clarksville, 99000213

UTAH

Summit County

St. John's Swedish Lutheran Church, 323 Park Ave., Park City, 99000217

Wasatch County

Clotworthy—McMillan House, 261 S. Main St., Heber City, 99000216

Washington County

Leavitt, Lemuel and Mary Ann, House (Santa Clara, Utah MPS), 1408 Quail, Santa Clara, 99000215

Reber, Frederick, Jr., and Mary F., House (Santa Clara, Utah MPS), 3334 Hamblin Dr., Santa Clara, 99000214

VERMONT

Addison County

Fletcher, Paris and Anna, House, VT 22A, N of jct. with Middle Rd., Bridport, 99000218

[FR Doc. 99-1691 Filed 1-25-99; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force; Notice of Establishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary

of the Interior is establishing the Trinity River Basin Fish and Wildlife Task Force (Task Force). The purpose of the Task Force is to assist the Secretary of the Interior in formulating and implementing a Trinity River watershed ecosystem management program for fish and wildlife. This ecosystem management program will incorporate the needs of multiple species and their interactions with physical habitats to assist the Secretary in restoring the natural function, structure, and species composition of the ecosystem, recognizing that all components are interrelated. The Task Force will advise the Secretary on (1) rehabilitation proposals for the Trinity River and its tributaries, (2) ways to increase the effectiveness of the Trinity River Fish Hatchery, and (3) on the establishment of an adaptive management program to monitor fish and wildlife populations and the effectiveness of the rehabilitation work.

Further information regarding the Task Force, including nominations for membership, may be obtained from the Bureau of Reclamation, Department of the Interior, 1849 C Street, NW, Washington, DC 20240. You may also call Bernice Sullivan, Trinity-Klamath Watershed Program Coordinator, at (916) 978-5113.

The certification of establishment is published below:

Certification

I hereby certify that establishment of the Trinity River Basin Fish and Wildlife Task Force is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99-1680 Filed 1-25-99; 8:45 am]

BILLING CODE 4310-94-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Contra Costa Water District's Future Use and Operation of Contra Loma Reservoir Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft environmental impact report/draft environmental impact statement (DEIR/DEIS). INT—DES 99-1.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality

Act, the Bureau of Reclamation (Reclamation) and Contra Costa Water District (CCWD) have prepared a joint DEIR/DEIS for CCWD's future use and operation of Contra Loma Reservoir Project. The proposed action is for CCWD to comply with a California State Department of Health Services order requiring either that recreational body contact activities in Contra Loma Reservoir (Reservoir) cease, or that CCWD stop using the reservoir for domestic water supply storage. CCWD's proposal would permanently stop body contact activities in the Reservoir in September 1999, and would construct a lagoon within the existing Reservoir to allow swimming and certain other activities. This project would enable CCWD to continue using the Reservoir for its historic domestic water supply purposes, including use for meeting peaking requirements and for system reliability during shutdowns and other emergencies. Action taken by Reclamation would allow CCWD to implement the proposal on lands owned by the United States at the reservoir. The DEIR/DEIS describes and presents the environmental effects of five alternatives, including two no-action alternatives. A public hearing will be held to receive comments from interested parties, organizations, and individuals on the environmental impacts of the proposal.

DATES: Submit written comments on the DEIR/DEIS on or before March 25, 1999. Comments may be submitted to Reclamation or CCWD at the addresses provided below. The public hearing on the DEIR/DEIS will be held on February 18, 1999, at 7:00 p.m.

ADDRESSES: The public hearing will be held at the Antioch Senior Center, 415 W. Second Street in Antioch, California.

Written comments on the DEIR/DEIS should be addressed to Ms. Fran Garland, Contra Costa Water District, 2300 Stanwell Drive, Suite A, Concord CA 94524, or to Mr. Bob Eckart at the Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825.

Copies of the DEIR/DEIS may be requested from Ms. Garland at the above address or by calling (925) 688-8312.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the DEIR/DEIS are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Eckart, Bureau of Reclamation, at (916) 978-5051, or Ms. Fran Garland, Contra Costa Water District, at (925) 688-8312.

SUPPLEMENTARY INFORMATION: The proposed action includes the continued use of Contra Loma Reservoir

(Reservoir) as a drinking water supply and the construction of a separate swimming lagoon (lagoon) within the existing reservoir footprint. A concrete-covered earthen berm would physically separate the lagoon from the main portion of the 80-acre reservoir. Water in the lagoon would be pumped, filtered, and treated to appropriate water quality standards for recreation use. This project would allow existing drinking water and swimming uses to continue at the Reservoir.

The action is proposed in response to an Order from the California State Department of Health Services requiring CCWD, as the water supplier, to either cease using the reservoir as a drinking water supply or eliminate body contact recreation activities occurring in it. The purpose of this action is to respond to the Order while allowing existing drinking water supply use to continue and maintaining the existing recreation activities at the Reservoir to the extent feasible. Recreation facilities at Contra Loma Reservoir are operated by the East Bay Regional Park District under an agreement with Reclamation.

Action alternatives evaluated in the DEIR/DEIS include construction of a water treatment plant, and connecting to East Bay Municipal Utility District's Mokelumne Aqueduct. No-Action alternatives evaluated include: (1) Stop use of the Reservoir for drinking water and allow body contact to continue, and (2) Stop use of the Reservoir for body contact activities and continue use as a drinking water supply.

Copies of the DEIR/DEIS are available for public inspection and review at the following locations:

- Contra Costa Water District at 2300 Stanwell Drive, Suite A in Concord, CA 94524; telephone: (925) 688-8312.
- Bureau of Reclamation, Program Analysis Office, Room 7456 at 1849 C Street NW in Washington DC 20240; telephone: (202) 208-4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167 at the Denver Federal Center, 6th and Kipling in Denver, CO 80225; telephone: (303) 445-2064.
- Bureau of Reclamation, Regional Director, Attention: MP-140 at 2800 Cottage Way in Sacramento, CA 95825-1898; telephone: (916) 978-5100.
- Natural Resources Library, U.S. Department of the Interior at 1849 C Street NW, Main Interior Building in Washington, DC 20240-0001.
- Antioch Branch Library at 501 W-18th Street in Antioch, CA 94509.
- Bay Point Branch Library at 205 Pacifica Avenue in Pittsburg, CA 94565.
- Pittsburg Branch Library at 80 Power Avenue in Pittsburg, CA 94565.

- Oakley Branch Library at 118 East Ruby in Oakley, CA 94561.
- Concord Branch Library at 2900 Salvio in Concord, CA 94519.
- Contra Costa County Public Library at 1750 Oak Park Boulevard in Pleasant Hill, CA 94523.

Hearing Process Information

CCWD staff will make a brief presentation to describe the proposed project, its purpose and need, alternatives considered, and scenarios for construction and operation. The public may comment on environmental issues addressed in the DEIR/DEIS. If necessary due to large attendance, comments will be limited to 5 minutes per speaker. Written comments will also be accepted.

Dated: January 13, 1999.

Michael Ryan,

Acting Regional Director.

[FR Doc. 99-1681 Filed 1-25-99; 8:45 am]

BILLING CODE 4310-94-P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 3, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA-777-779 (Final) (Certain Preserved Mushrooms from China, India, and Indonesia)—briefing and vote.
5. Outstanding action jackets:
 - (1.) Document No. GC-98-069: APO matters.
 - (2.) Document No. GC-98-071: APO matters.
 - (3.) Document No. GC-98-073: Disposition of respondents' petition to amend protective order in previous investigation (Inv. No. 337-TA-345) concerning Inv. No. 337-TA-414 (Certain Semiconductor Memory Devices and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 20, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-1868 Filed 1-22-99; 2:36 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

Project Title: Local Job Vacancy Survey

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: This Notice contains all of the necessary information and required forms to apply for grant funding. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of funds for Service Delivery Areas (SDAs) and/or organizations that represent them (e.g., States, One-Stop Centers, partners) to participate in enhancing the One-Stop Career System. The demonstration program will be funded by the Wagner-Peyser Act. This notice provides information on the process that eligible entities must use to apply for demonstration funds, how grantees are selected, and the responsibilities of grantees.

DATES: The closing date for receipt of proposals is March 31, 1999, at 4:00 p.m. (Eastern Time).

ADDRESSES: Applications must be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Reda Harrison, Grants Management Specialist, 200 Constitution Avenue, NW, Room S-4203, Washington, DC 20210, Reference: SGA/DAA 99-004.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Reda Harrison, Grants Management Specialist, Division of Acquisition and Assistance, Fax (202) 219-8739. This is not a toll-free number. All inquiries should include the SGA number (SGA/DAA 99-004) and a contact name and phone number. This solicitation will also be published on the Internet, on the Employment and Training Administration's Home Page at <http://www.doleta.gov>. Award notifications will also be published on the Home Page.

SUPPLEMENTARY INFORMATION: The One-Stop/Labor Market Information (LMI)

Initiative is soliciting proposals, on a competitive basis, from Service Delivery Areas (SDAs) to fund the collection of localized job vacancy surveys. Applicants selected for award will be those who best delineate their innovative approaches to conduct the surveys. Proposals must demonstrate methods of how SDAs will cooperatively work with State and local One-Stops to produce localized job vacancy surveys that will be useful to One-Stop Career Centers. The announcement consists of four parts. Part I describes the application process for eligible applicants who wish to apply for grants funds. Part II provides the Government's Required Statement of Work. Part III describes the selection criteria for award. Part IV provides information regarding reporting requirements.

Part I. Application Process

A. Eligibility. Eligible applicants are JTPA Service Delivery Areas (SDAs) and/or organizations that represent them, e.g., stakeholders, Human Resource Councils, PICs, local Workforce Investment Boards, and other local entities, or State Workforce Development Councils. Applicants must demonstrate how they will develop a good working relationship with the state Labor Market Information (LMI) or Research and Analysis (R&A) offices and the local One-Stop Center. Finally, applicants must have fiscal agents familiar with Department of Labor practices AND must be able to sustain the survey two years after ETA seed money expires.

B. Period of Performance. The Period of Performance will be for a 12-month period.

C. Funding. The Department anticipates awarding six (6) grants not to exceed \$75,000 each for a total of \$450,000. Applications that exceed \$75,000 will not be considered. Awards will be made on a competitive basis.

D. Page Limitation. Applicant's technical proposal shall be limited to 20 double-spaced, single-sided pages with 1-inch margins. Text type shall be at least 10 pitch or larger. Applications that do not meet these requirements will not be considered.

E. Submission of Proposal. An original and three copies must be received. Your proposal must be organized in the following manner:

Section I—Financial and Summary Information. (This section does not count against the page limitation.)

(1) Standard Form (SF)-424: "Application for Federal Assistance" (Appendix A). The Federal Domestic Assistance Catalog number 17.246.

(2) A one page summary of your proposed project which shall include information on the number of welfare recipients in the State and proposed target area.

(3) "Budget Information", (Appendix B). Also include, on separate pages, a detailed breakout of each proposed budget line item.

Section II—Technical Proposal. (limited to 20 pages.)

Your technical proposal must demonstrate the grant applicant's capabilities in accordance with the Statement of Work in Part II of this solicitation. No cost data or reference to costs shall be included in the Technical Proposal. Applicants must also include resumes of proposed staff and an organizational chart. (This does not count against the page limitation).

F. Hand Delivered Proposals.

Proposals should be mailed at least five (5) days prior to the closing date. However if proposals are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Time, March 31, 1999. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time on the closing date. Telegraphed, electronic mail, or faxed proposals will not be honored. Failure to adhere to these instructions will be a basis for determination of nonresponsiveness.

G. Late Proposals. A proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before the award is made and was either:

(1) Sent by the U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of the proposals. The term "working days" excludes weekends and the U.S. Federal holidays.

(2) Sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th). The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. *Post-mark* means a printed, stamped, or otherwise placed impression (exclusive of a

postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper. Both postmarks must show a legible date, or the application shall be processed as though it had been mailed late. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, offerors should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

H. Withdrawal of Proposals. A grant application may be withdrawn by written notice or telegram (including mailgram) received at any time before the awarding of a grant. An application may be withdrawn in person by the grant applicant, or by an authorized representative of the grant applicant if the representative's identity is made known and the representative signs a receipt for the proposal.

Part II. Background and Purpose

A. Background

In the past thirty years, the Federal Government has conducted three different experimental survey programs designed to measure job openings in the labor market. In the period 1969–1973, the Bureau of Labor Statistics (BLS) began the JOLTS (Job Openings and Labor Turnover Survey) program which collected data primarily in the manufacturing sector. Then in 1979–80, the BLS Job Openings Pilot Program (JOPP) conducted a series of pilot programs to assess the feasibility of collecting data nationally. Finally in 1990 and 1991, the BLS once again embarked on another similar pilot project which concluded that such data could be collected but was expensive to obtain. According to BLS officials, it is doubtful that any national effort to collect local job vacancy data will occur

in the near future. Throughout the 1970s, Wisconsin policymakers continued to collect job vacancy data despite the lack of federal funds in support of the program. From 1975 through 1981, the Wisconsin Department of Industry, Labor and Human Resources (DILHR) expanded coverage to all industries from the initial manufacturing emphasis; but, eventually shut down the program in December 1981 when federal funds were withdrawn.

In the mid-1960s, when unemployment rates were very low and job vacancies may have equaled the number of unemployed, the common view among academics and policymakers was that vacancies beyond normal turnover were the result of the unemployed not knowing how to find available jobs and that jobseekers mainly needed mechanisms to link up with the companies looking to fill vacancies (Abraham, 1983). More recently, the Employee Turnover Job Openings (ETJO) experiment reflected an interest in identifying occupational labor shortages to determine where hard to fill openings were occurring (BLS, 1991). Others have stressed the importance of collecting vacancy survey data and analyzing it in comparison to the unemployed and underemployed, noting that the supply of workers dramatically exceeds demand (Abraham, 1983; Reimer, 1988); (Levitan and Gallo, 1989). The combination of demand information available through establishment surveys combined with supply data from a CPS type of household survey can provide policy makers, employers and educators with an analysis more suited to solving the employment needs of those seeking work and of the non-working population which policymakers argue should be seeking employment.

During the 1970s and up until December 1981, the Bureau of Labor Statistics and the Wisconsin Department of Industry, Labor and Human Relations, regularly surveyed manufacturing establishment to obtain data on long- and short-term job openings, new hires and separation rates. The Job Openings and Labor Turnover Survey (JOLTS) was established by the Bureau of Labor Statistics and administered locally. It was sent out monthly to a statewide sample of 7,200 businesses in covered establishments, mostly in the manufacturing sector. The survey did not collect data on full-time/part-time status, wages or benefits, but provided valuable survey indicators to gauge local labor market trends. However, funding for this joint federal and state effort was

discontinued by the Federal Government. Since the JOLTS survey was last administered in December 1981, no other establishment data has been collected on either openings or separations. More recently, the U.S. Department of Labor has piloted a survey which examines job vacancies and which was considered for introduction at the federal and state levels. This survey requests occupational and industry data and wage data, but not part-time/full-time status or fringe benefits.

B. Purpose

The primary purpose of this award is to institute six pilot sites where local job vacancy data can be produced at a level of quality that will fulfill the needs of local One-Stop Centers as they serve a variety of customers, including welfare-to-work recipients. Innovation, coordination and partnerships, non-duplication of existing services, and leveraging of scarce resources are also important factors. DOL is interested in SDAs, or their representatives, who can use leverage funds from other sources to maintain the survey two years after the initial one year DOL funding expires.

Part III. Statement of Work

With the tremendous growth in the economy over the past several years coupled with the growing needs for better labor market information as a result of the Welfare-to-Work legislation, localities need to know where local job vacancies exist. Information on new hires is particularly important because many firms use entry-level positions as steps for promotions within companies. Location of employment is essential not only for the value it may have for descriptive purposes but because companies often have sub-units throughout the state or region for which hiring and wage reporting is included, and metropolitan employment trends on administrative office locations may be skewed to overestimate openings.

To that end the major tasks of this procurement are, but not limited to, the following:

- To conduct local job vacancy surveys using the methodology designed by John Pawasarat at the Employment and Training Institute at the University of Wisconsin-Milwaukee.
- SDAs will have to develop a good working relationship with the state LMI or R&A offices in order to obtain the ES-202 file or the Employer Database file to design the survey instrument. Close coordination between SDAs and the State LMI office is strongly encouraged and is a necessity if the state is to share

confidential employer files with the SDAs.

- Applicants must be willing and able to get a 75% response rate to any proposed survey or else submit an explanatory note why they were unable to do so.

- Applicants should also have a good working relationship with the local One-Stop Center and design a survey instrument which produces information helpful to the local One-Stop in supplying clients with job vacancy information.

- Applicants must be familiar with DOL practices and be able to sustain the survey two years after ETA seed money expires.

- Applicants must include a detailed work plan that delineates a schedule of proposed activities and milestones for implementing the tasks indicated above within the 12-month award period.

- Finally, selected applicants will be required to work with the Department of Labor to ensure that the survey instrument complies with all legal requirements that affect the Department, such as the Paperwork Reduction Act.

Part IV. Selection/Evaluation Criteria

Selection of grantees will be made after formal review of grant applications by a technical review panel. Each panelist will review the proposals for acceptability based upon overall responsiveness to the Statement of Work, with emphasis on the rating criteria listed below. The panels' recommendations are advisory in nature to help establish the competitive range. The Grant Officer will make final awards based on overall quality and what is in the best interests of the government. The Grant Officer may consider any or all available information. Applicants are advised that awards may be made without further discussions.

A. Technical Approach (20 points)
—Applicants should develop a technical approach that includes, but is not limited to: (1) A detailed questionnaire design, (2) definition of terms, (3) sample design (including address correction issues), and (4) how to handle nonresponses. The technical approach must match or exceed the "cookbook" developed by the Employment and Training Institute at the University of Wisconsin-Milwaukee which is available on their website: <http://www.uwm.edu:80/Dept/ETI/>.

B. Grantee's Past Performance (15 points)—Applicants should document prior experience with conducting job vacancy surveys or such experience of anyone who might be sub-contracted to

do the same (i.e., a State LMI or R&A office).

C. Understanding (15 points)—Applicants should describe in their own words why they believe local job vacancy surveys are needed and by whom. Understanding should be couched in the realm of One-Stop Career Centers' delivery system philosophy.

D. Coordination with Other State Agencies (25 points)—Applicants must prove a close working relationship with the State Labor Market Information or Research and Analysis Office. This relationship is necessary because the SDA, or its representative, must use confidential ES-202 Employer or other Employer files which exist in the LMI

offices in order to draw a sample from which to survey.

E. Coordination with local One-Stop Centers (25 points)—It is imperative that survey results are useful to the local One-Stop affiliated with the SDA; therefore, points will be awarded to those applicants who are able to show that the results of their job vacancy survey can be used in conjunction with other America's Labor Market Information System (ALMIS)-related products; specifically, but not limited to, America's Job Bank (AJB), America's Talent Bank (ATB), and America's Career InfoNet (ACINet).

Part V. Reporting Requirements

Applicants selected as grantees will be required to provide the following information in timely fashion:

A. Quarterly Financial Status Reports (i.e., Standard Form (SF) 269);

B. Monthly progress against the work plan (i.e., status) reports with narrative summaries;

C. Draft Final Project Report on desired outcomes within 30 days prior to grant expiration date. Specific format to be determined.

Signed on this 19th day of January 1999.

Janice E. Perry,

Grant Officer, Department of Labor/ETA.

Appendices

Appendix A—Application for Federal Assistance (Standard Form (SF)-424)

Appendix B—Budget Information

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A
OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION			
Legal Name:		Organizational Unit:	
Address (give city, county, State and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): 		7. TYPE OF APPLICANT: (enter appropriate letter in box) A. State B. County C. Municipa D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____	
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____		9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE:		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):			
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
a. Federal	\$.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
b. Applicant	\$.00		
c. State	\$.00		
d. Local	\$.00		
e. Other	\$.00		
f. Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?	
g. TOTAL	\$.00	☐ Yes If "Yes," attach an explanation. ☐ No	
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.			
a. Typed Name of Authorized Representative		b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed	

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable) | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided.
<ul style="list-style-type: none"> - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project. | | |

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	\$	\$	\$
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	\$		\$
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	\$	\$	\$

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION**SECTION A - Budget Summary by Categories**

1. **Personnel:** Show salaries to be paid for project personnel.
2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.
3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of \$5,000 or more.
5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.
6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. **Total, Direct Costs:** Add lines 1 through 7.
9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. **Training /Stipend Cost:** (If allowable)
11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

**NATIONAL CREDIT UNION
ADMINISTRATION****Sunshine Act Meeting**

TIME AND DATE: 10:00 a.m., Thursday, January 28, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.

2. Request from a Federal Credit Union to Expand its Community Charter.

3. Appeal from a Federal Credit Union of Regional Director's Denial of a Community Charter.

4. NCUA's 1999 Annual Performance Plan.

5. Adoption of the FFIEC Interagency Policy Statement on Assessment of Civil Money Penalties.

6. Final Rule: Amendment to Section 701.21(c)(7)(ii)(C), NCUA's Rules and Regulations, Interest Rate Ceiling.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, January 28, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Request for Authority for Expenditure of Funds. Closed pursuant to exemption (8).

2. Administrative Action under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemption (6).

3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (4), (7), (8), (9)(A)(ii), and (9)(B).

4. NCUA's Travel Policy. Closed pursuant to exemptions (2) and (6).

5. Four (4) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT:

Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99-1832 Filed 1-21-99; 5:08 pm]

BILLING CODE 7535-01-M

**NATIONAL TRANSPORTATION
SAFETY BOARD****Public Hearing**

The National Transportation Safety Board will convene a public hearing

beginning at 9:00 a.m., local time on Wednesday, February 3, 1999, at the Charleston Hilton Hotel, 4770 Goer Drive, North Charleston, South Carolina 29406-6543 concerning the Sinking of the pleasure Morning Dew on December 29, 1997. For more information, contact Donald Tyrrell, NTSB Office of Marine Safety at (202) 314-6455 or Matt Furman, NTSB Office of Public Affairs at (202) 314-6100.

Dated: January 20, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99-1682 Filed 1-25-99; 8:45 am]

BILLING CODE 7533-01-M

**NUCLEAR REGULATORY
COMMISSION****Agency Information Collection
Activities: Submission for OMB
Review; Comment Request**

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection:

NUREG/BR-0238, Materials Annual Fee Billing Handbook

NUREG/BR-0239, Financial EDI Authorization (NRC Form 628, "Financial EDI Authorization")

NUREG/BR-0253, Fact Sheet—Electronic Funds Transfer

NUREG/BR-0254, Payment Methods (NRC Form 629, "Authorization for Payment by Credit Card")

3. The form number if applicable: NRC Form 628, "Financial EDI Authorization"

NRC Form 629, "Authorization for Payment by Credit Card"

4. How often the collection is required: Annually.

5. Who will be required or asked to report: Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and

individuals who are required to pay a fee for inspections and licenses.

6. An estimate of the number of responses: 1,320 (300 for the NRC Form 628, "Financial EDI Authorization" and 1,020 for NRC Form 629, "Authorization for Payment by Credit Card").

7. The estimated number of annual respondents: 1,320 (300 for the NRC Form 628 and 1,020 for NRC Form 629).

8. An estimate of the total number of hours needed annually to complete the requirement or request: 105.6 (24 hours for NRC Form 628 and 81.6 hours for NRC Form 629).

9. An indication of whether Section 3507(d), Pub. L. 104-13 applies: Not applicable.

10. Abstract: The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit card. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (<http://www.nrc.gov/NRC/PUBLIC/OMB/index.html>). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by February 25, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150-0190), NEOB-10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 20th day of January 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99-1706 Filed 1-25-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Company, Pilgrim Nuclear Power Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Materials License and Issuance of Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR-35 for the Pilgrim Nuclear Power Station (Pilgrim) currently held by Boston Edison Company (Boston Edison), as owner and licensed operator of Pilgrim. The transfer would be to Entergy Nuclear Generation Company (Entergy). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by Boston Edison and Entergy, Entergy would assume title to the facility following approval of the proposed license transfer, and would be responsible for the operation, maintenance, and eventual decommissioning of Pilgrim. No physical changes to the Pilgrim facility or operational changes are being proposed in the application.

The proposed amendment would replace references to Boston Edison in the license with references to Entergy, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which

does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 16, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon John M. Fulton, Assistant General Counsel, at Boston Edison Company, 800 Boylston Street, Boston, Massachusetts 02199-8003 (tel: 617-424-2553; fax: 617-424-2733; e-mail: john_fulton@bedison.com), Jay E. Silberg, counsel for Boston Edison, at Shaw Pittman Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037-1128 (tel: 202-663-8063; fax: 202-663-8007; e-mail: jay_silberg@shawpittman.com), and Douglas E. Levanway, counsel for Entergy Nuclear Generating Company, at Wise, Carter, Childs and Caraway, P.O. Box 651, Jackson, Mississippi, 39205-0651 (tel: 601-968-5524; fax: 601-968-5519; e-mail: del@wisecarter.com); the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 25, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 21, 1998, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02199.

Dated at Rockville, Maryland this 21st day of January 1999.

For the Nuclear Regulatory Commission.
William M. Dean,

Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99-1703 Filed 1-25-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION**Advisory Committee on Nuclear Waste; Notice of Meeting**

The Advisory Committee on Nuclear Waste (ACNW) will hold its 106th meeting on February 23-25, 1999, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, February 23, 1999—8:30 A.M. until 6:00 P.M.

Wednesday, February 24, 1999—8:30

A.M. until 6:00 P.M.

Thursday, February 25, 1999—8:30 A.M. until 4:00 P.M.

The following topics will be discussed:

A. *Viability Assessment*—The Committee will continue its review of the Department of Energy's (DOE's) Yucca Mountain viability assessment (VA). Discussions with representatives of DOE and the NRC staff are possible. The Committee will discuss its own internal review of the VA.

B. *Waste Related Research*—The Committee will review nuclear waste related research and technical assistance being performed for the NRC. The Committee will present the results of this review in a report to the Commissioners due April 1999. Discussions with representatives of NRC's Office of Nuclear Regulatory Research and Nuclear Material Safety and Safeguards is anticipated.

C. *Preparation of ACNW Reports*—The Committee will discuss planned reports on the following topics: an ACNW self-assessment, DOE's Viability Assessment, NRC supported Waste Related Research, a White Paper on Repository Design Issues at Yucca Mountain, and other topics discussed during this and previous meetings as the need arises.

D. *Repository Design*—The Committee will begin work on a White Paper that addresses Repository Design Issues for Yucca Mountain. The paper will focus on the results of thermal testing and modeling and how moisture contacts and affects the waste package. The Committee may also examine the significance of coupled effects, aspects of waste retrievability, repository ventilation, rock fall, and water dripping into drifts.

E. *Meeting with NEI*—Representatives from the Nuclear Energy Institute will present their perspective on the upcoming year. Topics will focus on the U.S. high-level radioactive waste program and related legislation.

F. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards*—The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

G. *Prepare for the Next Meeting with the Commission*—The Committee will begin preparations for its next public meeting with the Commission. Specific topics for discussion will be finalized and reviewed.

H. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51967). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415-7366), between 8:00 A.M. and 5:00 P.M. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at <http://www.nrc.gov/ACRSACNW>.

Dated: January 20, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99-1707 Filed 1-25-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting

The agenda for the 459th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on February 3-6, 1999, in Conference Room T-2B3, 11545 Rockville Pike, Rockville, Maryland, has been revised to change the time for the ACRS meeting with the NRC Commissioners. The meeting with the NRC Commissioners will be held between 1:00 and 2:30 p.m., on Wednesday, February 3, 1999, instead of 2:00 and 3:30 p.m. Preparation of ACRS reports will begin at 3:00 p.m. instead of 4:00 p.m.

The agenda for February 4-6, 1999 remains the same as published in the **Federal Register** on Thursday, January 14, 1999 (64 FR 2525).

Further information regarding this meeting can be obtained by contacting Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch (telephone 301/415-7364), between 7:30 a.m. and 4:15 p.m. EST.

Dated: January 20, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99-1708 Filed 1-25-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of January 25, February 1, 8, and 15, 1999.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 25—Tentative

There are no meetings scheduled for the Week of January 25.

Week of February 1—Tentative

Tuesday, February 2

2:00 p.m.—Briefing by Executive Branch (Closed-Ex. 1)

3:30 p.m.—Affirmation Session (Public Meeting) (if needed)

Wednesday, February 3

1:00 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301-415-7360)

Week of February 8—Tentative

Monday, February 8

2:00 p.m.—Briefing on HLW Program Viability Assessment (Public Meeting)

Tuesday, February 9

9:30 a.m.—Briefing on Fire Protection Issues (Public Meeting)

11:00 a.m.—Affirmation Session (Public Meeting) (if needed)

Thursday, February 11

2:30 p.m.—Briefing on Y2K Issues (Public Meeting)

Week of February 15—Tentative

There are no meetings scheduled for the Week of February 15.

* The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

Additional Information: By a vote of 5-0 on January 20, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Partial Granting of Petition for Rulemaking Submitted by the Nuclear Energy Institute (PRM-50-62)."

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 22, 1999.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.
[FR Doc. 99-1869 Filed 1-22-99; 2:41 pm]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Final Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Energy

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE). The purpose of the MOU is to continue the unique statutorily founded relationship and to update overall management policy that governs the relationship between NRC and DOE in the conduct of NRC-funded research programs at the DOE laboratories.

EFFECTIVE DATE: November 24, 1998.

ADDRESSES: Copies of all NRC documents are available for public inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday (except Federal holidays). Telephone service is provided from 8:30 a.m. to 4:15 p.m. at 202-634-3273 or toll-free at 1-800-397-4209.

FOR FURTHER INFORMATION CONTACT: Mary Lynn Scott, Office of Administration, U.S. Nuclear Regulatory Commission, telephone 301-415-6179, e-mail: mls2@nrc.gov.

Dated at Rockville, Maryland, this 19th day of January 1999.

For the Nuclear Regulatory Commission.

Michael L. Springer,

Director, Office of Administration.

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Energy Governing Nuclear Regulatory Commission Funded Work Performed at the Department of Energy Laboratories

I. Introduction

Section 205(c) of the Energy Reorganization Act of 1974 authorizes NRC to utilize the research facilities and services of DOE and other federal agencies to assist NRC in the conduct of its regulatory mission. On February 24, 1978, the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) executed a Memorandum of Understanding (MOU) which established overall management policy for an interagency relationship in the conduct of NRC programs. This longstanding and productive relationship has allowed each agency to more effectively meet its mission

and objectives. This document supersedes the February 24, 1978 MOU.

II. Authority

The DOE is acting pursuant to authorities conferred in the Energy Organization Act, 42 U.S.C. § 7101 et seq. (42 U.S.C. § 7151), and the Atomic Energy Act of 1954, 42 U.S.C. § 2011 (42 U.S.C. § 2051, 2052, 2053). The NRC is acting pursuant to authority conferred in the Energy Reorganization Act of 1974, 42 U.S.C. § 5801 et seq. (42 U.S.C. § 5845 (b), (c), and (e)).

III. Purpose

The purpose of this MOU is to continue the unique statutorily founded relationship and to update overall management policy which governs the relationship between NRC and DOE in the conduct of NRC-funded research programs at the DOE laboratories. Specifically, this MOU provides for the following:

1. Priority. That NRC/DOE interagency activities will be conducted at DOE facilities based on a priority mutually agreeable to both agencies.

2. Independent Access. The NRC will have access to DOE's facilities as necessary to review and monitor project scope, schedule and funding.

3. Communication. That NRC and DOE will establish distinct lines of communication at various levels, as necessary, to ensure efficient and effective management of resources.

This MOU does not cover those activities and projects described in the January 15, 1997, MOU, entitled, "Memorandum of Understanding between the Department of Energy and the Nuclear Regulatory Commission for Cooperation and Support of Significant Projects and Activities." It is intended that each MOU coexist concurrently with each other. This MOU also does not cover any activities associated with external regulation of DOE facilities by NRC. This MOU shall not be used to obligate or commit funds or as the basis for transfer of funds between the agencies.

IV. Agreements Between Parties

A. Business Practices Associated with NRC Work Performed by DOE Laboratories

All NRC funded work performed at the DOE laboratories shall be administered in accordance with standard NRC and DOE policies and procedures as agreed to and implemented by each agency. The DOE policies governing work for others are set forth in DOE order 481.1, Work for Others (Non-Department of Energy Funded Work). The NRC policies for work placed at DOE laboratories are set forth in NRC Management Directive 11.7, NRC Procedures for Placement and Monitoring of Work with the U.S. Department of Energy (DOE).

When NRC initiates proposed changes in MD 11.7 that may affect NRC work at DOE laboratories, NRC shall promptly furnish DOE copies of the proposed changes and obtain DOE's review and comments prior to issuing such proposed changes in MD 11.7. When DOE initiates proposed changes in DOE Order 481.1 that may affect NRC work at DOE laboratories, DOE shall notify NRC of

those proposed changes and NRC shall promptly initiate conforming changes in MD 11.7 using the above procedures to the maximum practicable extent. Specifically, NRC Management Directive 11.7 ensures:

- that procedures for negotiating and managing agreements with DOE are consistent with sound business practices and contracting principles.
- the uniform application of an agency-wide standard of contract management of projects placed with DOE.
- that a framework exists for program management, control, administration, monitoring and closeout of projects placed with DOE.

B. NRC Dedicated Facilities

When an NRC dedicated facility is required for a project, NRC will plan, budget and fund feasibility and conceptual design studies, either through DOE or an NRC commercial contract. Upon the completion of the conceptual design stage for an NRC dedicated facility, the agencies will negotiate and execute an interagency agreement which identifies appropriate funding arrangements and procedures for detailed design and construction, related capital equipment, scope, schedule, and plans for future decommissioning or deactivation of the facility.

Upon completion of an NRC program at a dedicated facility, the NRC will make a determination as to the future need for that facility. If no further NRC need is established, and if DOE does not have need for the facility, it will be decommissioned or deactivated in accordance with the provisions of the interagency agreement for the project. The actual decommissioning work will be performed by DOE or its contractors.

C. Planning

1. *Long Range Planning.* NRC and DOE will cooperate to the extent necessary, on long range planning to ensure that all required research, technical assistance, facility and other associated expenses are properly budgeted by the respective agencies. When requested, either agency will assist the other in budget discussions with the Office of Management and Budget and the Congress in areas of mutual interest.

NRC, to the extent possible, will advise DOE of changes in program emphasis or agency budget changes which may have a significant impact on DOE Operations Offices and/or DOE laboratory employment levels. DOE will advise NRC of any plans that may have an adverse impact on NRC's projects and which could impair fulfillment of NRC's regulatory mission.

2. *Program Planning Agreements.* In order to accommodate the planning of research and development projects of mutual interest to NRC and DOE, the offices involved may enter into program planning agreements to establish a framework for cooperation and coordination of the technical activities of the two agencies in those areas of mutual interest. Such agreements may be used for advance coordination of major NRC research and development efforts involving the anticipated use of DOE laboratories. Program planning agreements shall be signed by the

responsible NRC office director or designee and the responsible DOE office director or operations office director or designee. Program planning agreements shall not be used to obligate funds.

D. Information Management

1. Each agency recognizes that it is responsible for the identification, protection, control and accounting of information or data used or otherwise furnished in connection with this MOU in accordance with its established procedures. This consists of classified, proprietary, procurement-sensitive and safeguards information. Also included is Unclassified Controlled Nuclear Information as described by Section 148 of the Atomic Energy Act of 1954, as amended.

2. In accordance with DOE procedures, DOE will be responsible for assuring that its contractors and subcontractors involved in NRC programs fully protect the types of information specified above.

3. Requests for foreign nationals for access to information or data furnished by NRC will be referred to NRC for disposition.

E. Organizational Conflicts of Interest

DOE recognizes that Section 170A of the Atomic Energy Act of 1954, as amended, requires that NRC be provided with disclosures on potential conflicts when NRC obtains technical, consulting, research and other supporting services. DOE further recognizes that the assignment of NRC work to DOE laboratories must satisfy NRC's conflicts standards.

Accordingly, when NRC enters into an agreement with a DOE laboratory to perform work for NRC, the laboratory shall review its current work, planned work and, where appropriate, past work for DOE and others to determine whether such work is in the same or similar area as the proposed NRC project. Should that review reveal current or planned work for DOE or others in the same or similar technical area as the proposed NRC work, the laboratory shall disclose such potentially conflicting work to NRC. NRC shall then determine whether a conflict would result and, if one does, determine, after consultation with the laboratory and DOE, the appropriate action NRC or DOE should take to avoid the conflict or, when appropriate under NRC procedures, waive the conflict.

F. International Affairs

The NRC will request, as necessary, participation of foreign nationals in the conduct of research work performed at DOE laboratories. All such requests shall be in writing and provide sufficient lead time for DOE Operations Office and headquarters review and approval. A copy of each request will be provided to the Office of International Science and Technical Corporation in DOE, and to the Office of International Programs in NRC or their successor offices.

V. Agency Interface

A. Establishment of Policy

The NRC Executive Director for Operations and the Under Secretary for DOE or designee will establish any additional required policy consistent with this MOU for the conduct of interagency interface, relationship and responsibilities.

B. Administrative Matters

Administrative matters, including policy interpretation, and related issues are the responsibility of the following individual offices designated by each agency:

NRC

Office of Administration

DOE

Office of Laboratory Policy

Office of Energy Research

Representatives of these designated offices will meet as necessary to discuss and resolve any problems or issues which may affect either agency's ability to carry out the provisions of this agreement. If these representatives are unable to agree on a resolution, the matter will be raised through each agency's management chain, as necessary.

C. Routine Activities

The routine activities performed in accordance with this MOU are the responsibility of the DOE Operations Office in coordination with the NRC program or regional office. Therefore, every attempt should be made to resolve operational problems at the field level. When possible, a problem should be identified in writing. If a problem cannot be resolved at the field level, the matter will be raised through each agency's management chain, as necessary and appropriate.

VI. General Provisions

A. NRC Field Office

1. NRC may establish field offices at DOE sites. The functions of an NRC field office are:

- assignment of NRC personnel to dedicated facilities as necessary
- monitor and review all NRC work at the site; and
- act as an interface between the NRC headquarters and the DOE Operations Office

B. Effective Date

This MOU shall become effective upon the latter date of signature of the NRC Chairman or the DOE Secretary or their designees. This MOU shall remain in effect until terminated by mutual agreement or by written notice of either party submitted six months in advance of termination.

C. Amendments to This MOU

This MOU may be modified or amended by written agreement between the NRC Chairman and the DOE Secretary, or their designees as appropriate.

For U.S. Nuclear Regulatory Commission.

Dated: October 15, 1998.

Shirley Ann Jackson,
Chairman.

For U.S. Department of Energy.

Dated: November 24, 1998.

Bill Richardson,
Secretary.

[FR Doc. 99-1701 Filed 1-25-99; 8:45 am]

BILLING CODE 7590-01-M

**NUCLEAR REGULATORY
COMMISSION****[Docket No. 40-3453; License No. SEA-917]****Atlas Corporation; Director's Decision
Under 10 CFR 2.206**

SUMMARY: Notice is hereby given that a request for Hearing and Petition for Leave to Intervene (Petition) filed by the State of Utah (State) has been reviewed by the staff as a petition under 10 CFR 2.206, in accordance with 10 CFR 2.1205(l)(2). For reasons explained in Director's Decision DD-99-02, dated January 20, 1999, the Petition has been denied.

On August 2, 1988, Atlas Corporation (Atlas) submitted an application for a license amendment to revise its site reclamation plan for uranium mill tailings at its site near Moab, Utah. On April 4, 1994, notice of Receipt of Application and notice of Opportunity for Hearing on the application were published in the **Federal Register**. 59 FR 16,665 (1994). On July 13, 1998, the State filed its Petition stating that if the Petition is found to be untimely that it be treated as a 10 CFR 2.206 petition in accordance with 10 CFR 2.1205(l)(2). The Petition was filed by Denise Chancellor, Assistant Attorney General on behalf of the State. By Memorandum and Order dated August 13, 1998, the Presiding Officer determined that the Petition was inexcusably late and would be treated as a petition under 10 CFR 2.206, in accordance with 10 CFR 2.1205(l)(2). On October 22, 1998, notice of receipt of the Petition was published in the **Federal Register**. 63 FR 56667 (1998).

In its Petition, the State asserted that if Atlas were to proceed with its reclamation plan as approved by the Nuclear Regulatory Commission, it would be in violation of 10 CFR Part 40, Appendix A. The Petition was referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by Section 2.206 and discussed in the **Federal Register** notice, appropriate action was taken on this Petition. The staff reviewed the specific assertions made by the State and concluded that the Petition should be denied. The basis for the staff's conclusions are detailed in Director's Decision DD-99-02, dated January 20, 1999. A copy of the Director's Decision is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT:
Myron Fliegel, Petition Manager,
Telephone (301) 415-6629.

Dated at Rockville, Maryland, this 20 day of January, 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

*Director, Office of Nuclear Material Safety
and Safeguards.*

Director's Decision Under 10 CFR 2.206**I. Introduction**

On August 2, 1988, Atlas Corporation (Atlas or licensee) submitted an application for a license amendment to revise its site reclamation plan for uranium mill tailings at its site in Moab, Utah. On April 4, 1994, notice of Receipt of Application and notice of Opportunity for Hearing on the application were published in the **Federal Register**. 59 FR 16665 (1994). On July 13, 1998, the State of Utah (State or Utah) filed the State's Request for Hearing and Petition for Leave to Intervene (Petition). By Memorandum and Order dated August 13, 1998, the Atomic Safety and Licensing Board determined that the petition was inexcusably late and would be treated as a petition under 10 CFR 2.206, in accordance with 10 CFR 2.1205(l)(2).

In its Petition, the State asserts that if Atlas were to proceed with its reclamation plan as approved by the U.S. Nuclear Regulatory Commission (NRC), it would not meet the requirements of 10 CFR Part 40, Appendix A. More specifically, the State asserts that the rock apron design (armoring the side slope and toe of the tailings pile) does not provide reasonable assurance against engineering failure at the Atlas Uranium Tailings Site, and thus does not satisfy Appendix A. As bases for its assertion it is stated that the unpredictability of flood events, erosion, and vegetation growth along the river banks makes computation of the probability of river migration extremely difficult and that, therefore, conservatism should be built into how the tailings pile is armored. The State, furthermore, references an April 2, 1998, memorandum from its Department of Environmental Quality, Division of Radiation Control (DRC), wherein it is stated that: (1) There are two different conceptual designs for the Atlas tailings pile apron—one presented by Atlas and accepted by NRC, and the second presented by the U.S. Army Corps of Engineers (ACE); (2) assumptions and inputs to the conceptual models result in the size, gradation, and volume of rock necessary to protect the tailings pile from erosion by the Colorado River; (3) the DRC staff has concluded that the ACE approach is more protective of the tailings pile side slopes; and (4) the DRC staff disagrees

with the NRC conclusion that the Atlas design provides the necessary protection of the tailings pile in the event of river migration. A letter acknowledging receipt of the Petition and its status for consideration pursuant to 10 CFR 2.206 was sent to the State on September 26, 1998.

II. Background

In 1997, the NRC staff issued NUREG-1532 "Final Technical Evaluation Report for the Proposed Revised Reclamation Plan for the Atlas Corporation Moab Mill" (TER), presenting its evaluation of technical issues related to Atlas Corporation's proposed reclamation plan for the uranium mill tailings pile. Among the issues considered was the ability of the proposed erosion protection design to prevent erosion from various flooding events over long periods of time. One of the features of the erosion protection design evaluated in the TER was the ability of the self-launching rock apron to prevent erosion of the tailings if the Colorado River were to migrate to the pile.

In the TER, the staff concluded that the rock apron provided adequate protection for the reclaimed tailings pile, in the unlikely event that the Colorado River migrated several hundred feet and reached the toe of the pile. The adequacy of the apron design was questioned by the State and the Grand County Council (GCC). In addition, the GCC funded a report developed by the ACE that indicated that the rock apron had not been designed properly. The GCC also solicited the opinions of vegetation and geomorphic experts and provided those opinions to the State. These reports, questions, and comments were transmitted to the NRC staff by the State by letters dated November 10, 1997, and January 9, 1998.

Because the 1997 TER only summarized the NRC staff review of the rock apron, a supplemental report (SR) was developed to address in detail the questions and concerns raised by the DRC. The SR addressed specific aspects of the staff review and provided a detailed technical basis for the staff's conclusions on the adequacy of the rock apron. The SR also addressed issues raised by the GCC and the ACE. Specific topics that were addressed included: (1) Potential for erosion and migration of the Colorado River; (2) riprap size needed for the side slopes to protect from overland or overtopping flows; (3) riprap size needed to protect the side slope from velocities in the river; (4) rock volume needed; (5) river velocities; (6) vegetation/tamarisk growth and the

effects on river flow velocities; (7) ACE design procedures, including specific discussions of computations and analytical methods; (8) potential for cohesive soils to affect the performance of the rock apron; (9) reasonable assurance requirements, NRC staff review procedures, and other regulatory requirements; (10) post-licensing monitoring and maintenance; and (11) other conservatisms in the design. Each of these factors was discussed in a degree of detail that was not provided in the TER. In addition, specific contentions and questions raised by the GCC, ACE, and/or DRC were addressed.

III. Discussion

As discussed in the TER, the staff considers that an adequate design has been provided for the rock apron to be placed at the toe of the Atlas tailings pile side slope near the Colorado River. This conclusion is based on many factors, including evaluation of design details that are very site-specific.

For the Atlas site, the design of the rock apron is affected by three principal factors: (1) The velocity or shear stress that is used in various analytical methods to determine the rock size necessary to resist erosive forces; (2) the analytical methods that are used to determine rock size, layer thickness, and rock volume; and (3) the estimated scour depth that is used to determine volume of rock needed in the apron. For each of these factors, there may be several acceptable methods for estimating and calculating the parameters. For example, a designer could assume various combinations of values for velocity, shear stress, radius of curvature, or other inputs to a design method and arrive at different estimates of rock size and rock volume. Also, each parameter requires input data, based to a great extent on the assumed configuration of the river and other assumptions related to expected river velocities.

It should also be emphasized that there are many procedures for determining the rock sizes necessary to resist erosion. Over the years, various Government agencies and individuals have developed procedures that best suit their needs, given the degree of conservatism necessary, the risk to public health and safety, and other factors, such as cost. Use of any specific one of those procedures, including the ACE procedure, for determining rock size, is not necessarily "correct" nor required. It should be recognized that different methods are used by different organizations and agencies. ACE's special need to protect embankments, where erosion or failure could

immediately jeopardize many lives behind those structures, is not necessarily the needs of designers to provide reasonable assurance of tailings stability, or to meet the requirements of 10 CFR Part 40, Appendix A.

The staff considers it important to use input parameter values that can be reasonably expected to affect the rock apron (if the river were to migrate), not values that are based on very conservative assumptions. For many situations where streambank erosion is imminent, a bank configuration can be easily determined, based on observed conditions. However, in this case, the main river channel is hundreds of feet away and not threatening the tailings pile, and the rock apron must be designed for some future unknown configuration of the river. Therefore, the staff assumed that the river would retain its principal characteristics, even though it had migrated. Recognizing that exact characteristics would be difficult to predict, the staff assumed that the river would retain the same width, depth, radius of curvature, and velocity. It is also possible that the river would migrate and develop characteristics such as increased width, decreased depth, decreased velocity, and increased radius of curvature; such assumptions would result in lesser rock apron designs being protective of the pile.

In making assumptions such as those discussed above, the staff is required by 10 CFR Part 40, Appendix A, to have reasonable assurance of tailings stability. The staff is not required to make a determination with absolute certainty. Therefore, given the fact that river migration to the pile in itself is unlikely, the staff is required only to assume a reasonable configuration, not necessarily an extreme configuration that maximizes every design parameter or input to a riprap design method. Recognizing that a considerable amount of judgment is necessary to predict design conditions at this site, such as river configuration or river velocity, it is not the position of the NRC staff to assume the most critical value for every input parameter that is used in every calculation. Reasonable assurance only requires that input parameters be selected within a reasonably conservative range of values of the parameter.

It should be emphasized that the staff does not consider the ACE analyses or design method to be incorrect or inappropriate. Rather, the staff considered that the input parameters selected for use in the analyses were overly conservative for this specific application and do not represent

conditions that can reasonably be expected to occur if the river were to migrate to the rock apron. In the SR, the staff provided many reasons to support its conclusion that the licensee's design was adequate and provided extensive discussion to show that the ACE report overestimates the riprap sizes and quantity of rock required for the rock apron to provide reasonable assurance of tailings stability. In summary, based on independent analyses of the licensee's proposal and the information provided the DRC and ACE, the staff concludes that Atlas proposes to use a volume and size of rock that is larger than the volume and size computed by the staff.

Each of the assertions made by the State in the Petition have been addressed previously by the staff. The staff provided its initial findings in its TER and provided further details of the staff analysis in its supplemental report that was transmitted to the State by letter dated February 26, 1998. The staff has provided detailed technical bases for its conclusion that the design of the rock apron meets the requirements of 10 CFR Part 40, Appendix A.

The State was offered an opportunity to provide additional information to further address its assertions. The State indicated that no additional information would be provided for staff review or consideration.

Each of the State's assertions is addressed in the following discussions. Each assertion is stated and a brief summary of the staff's analysis is provided. If additional details are needed, they may be found in the staff's SR.

Assertion 1. The unpredictability of flood events, erosion, and vegetation growth along the river banks makes computation of the probability of river migration very difficult, and therefore conservatism should be built into the tailings pile design.

The staff agrees that the computation of the probability of river migration is difficult. However, the staff has concluded that the potential for migration of the Colorado River to the tailings pile is very low and has provided several bases supporting that conclusion. The staff has also concluded that adequate conservatism has been provided by the apron design to demonstrate that Part 40 requirements have been met and has provided detailed analyses and technical bases supporting that conclusion.

First, the staff examined aerial photographs of the Colorado River in this area, taken over a period of about 47 years. Those photographs verified

that very little erosion has occurred over that period of time.

Second, the staff reviewed a report prepared by expert geomorphologists that addressed the river migration issue. In that report, it was concluded that river migration was unlikely and that lateral accretion, rather than erosion, has occurred in some areas near the pile. Those expert geomorphologists also examined aerial photographs and concluded that: "Review of available historical photographs indicates that the right bank * * * has remained *remarkably* fixed spatially." (Emphasis added.)

Third, the staff has visited the site several times and has determined that only some minor erosion of the river banks has occurred and that this can be attributed to sloughing, rather than erosion from river velocities. In fact, it was this minor erosion that led the staff to question the original conclusion of the licensee that the river would not erode.

Fourth, despite the information available on channel stability, a conservative approach was taken by Atlas in its reclamation plan by assuming that the Colorado River would migrate to the tailings pile and by designing the erosion protection apron to account for that event. This approach eliminated the need for Atlas to conduct further detailed analyses of river migration and provided a design that exceeds the reasonable assurance requirements specified in Part 40, Appendix A.

Fifth, the staff examined the effects of increased vegetation growth on the erosion potential of the Colorado River. The staff performed independent calculations and concluded that the potentially increased density of vegetation and tamarisks in the floodplains of the river will not significantly affect river velocities. Staff computations indicate that the maximum velocity will be only slightly increased in the river channel near the tailings pile. Based on staff experience with vegetated floodplains and the widespread use of vegetation to stabilize channel banks, it is also likely that increased vegetation density of the river will *increase* the erosion resistance of the channel banks and floodplain area near the tailings pile.

Assertion 2. There are two different conceptual designs: one presented by Atlas and accepted by the staff; and the second presented by the ACE.

The staff has recognized for some time that there are two designs and that the designs are different. In the SR, the staff addressed the ACE design and provided a detailed analysis of the ACE method

and the use of various input parameters to the ACE method. The staff performed a detailed review of the analyses, provided in the ACE report, that were used to assess the rock requirements for the apron. The staff evaluated input parameters related to computation of scour depths, river velocities, increases in river velocities at channel bends, and factors of safety. The staff also examined the technical basis for the development of the ACE procedure, including the supporting laboratory data. The staff's analysis of the ACE report is also discussed in Assertion 3, below.

Assertion 3. Assumptions and inputs to the conceptual models results in differences in the size, gradation, and volume of rock necessary to protect the tailings pile from erosion by the Colorado River.

The staff has recognized that differences in input parameters can significantly affect the size and volume of rock required for the rock apron. Extensive discussion of the ACE report and the ACE design method were provided in the SR.

Based on its review of the ACE report, the staff concluded that the design parameters selected for use in the ACE calculations of rock size were very conservative and did not reflect conditions that are likely to occur at the rock apron if the river migrated to the tailings pile. Velocities, radii of curvature, and scour depths were based on conditions that currently exist upstream, but do not exist in the vicinity of the apron. Velocities that would affect the apron will likely be smaller, and radii of curvature greater, than those that currently exist upstream of the site. In addition, the methods used by ACE to determine design velocities, increases in velocities in bends, and scour depths are conservative and incorporate large factors of safety that may not be necessary to provide reasonable assurance that Appendix A requirements are met. The staff, however, concluded that if reasonable and likely, values of channel velocity and channel curvature are used in the ACE method, the rock apron design proposed by Atlas is acceptable, even if all the other ACE safety factors are taken into account.

Assertion 4. The DRC staff has concluded that the ACE approach is more protective of the tailings pile side slope.

The staff agrees that the ACE design is more conservative than the design approved and would protect the pile under more severe conditions if such conditions were to occur. Use of the ACE approach to determine rock size

and volume results in larger quantity of larger rock. However, the staff has concluded that the design proposed by Atlas is acceptable and that more and larger rock is not required to meet the requirements of Appendix A.

In the SR, the staff provided an extensive discussion of how the reasonable assurance requirements are met by the proposed design. Further discussion was also provided on the use of standard review plans and design procedures that reflect an approach to tailings management that incorporates an appropriate level of safety.

Of considerable importance in the NRC staff's assessment of Atlas' proposed design of the rock apron is the concept of "reasonable assurance." NRC regulations require (Part 40, Appendix A, Criterion 6) "a design which provides reasonable assurance of control of radiological hazards to * * * be effective for 1000 years* * * ." This requirement comes directly from U.S. Environmental Protection Agency (EPA) requirements in 40 CFR Part 192. These standards do not require absolute nor even near certainty.

Several reasons can be offered to justify the appropriateness of a "reasonable assurance" requirement, rather than a more conservative requirement. Of primary importance is that exposure to uranium mill tailings do not pose an immediate acute risk to the health and safety of individuals. Rather, the risk posed by tailings is from continual exposure to low levels of radioactivity and is a long-term cumulative risk. If control of tailings were lost (for example, if an earthquake beyond the design basis were to damage the cover and expose tailings), actions could be taken to repair the damage, with little likelihood of endangering individuals.

Additionally, uranium mill tailings disposal sites will be under perpetual government custodial care. If the features providing control of the tailings were damaged or compromised in the future, the government custodian could assess the situation and provide repairs. Although NRC standards require that the design for control of radiological hazards not rely on maintenance, the concept of "reasonable assurance" does not preclude contemplation of government custodian actions in unusual or unlikely situations.

Finally, the rock apron does not have to withstand a single, severe event that could occur without warning at any time. This is unlike the situation in designing protection from earthquakes or severe precipitation. For those events, the protective design may not be tested for decades or centuries and then, in a

very short time, have to perform with a design event. If the Colorado River were to migrate towards the tailings pile, it would occur over decades or centuries. There would be ample time to determine whether the assumptions used in the design of the rock apron (e.g., the scour depth, river curvature, river velocity, etc.) were correct or appropriate.

In summary, NRC regulations and EPA standards do not require the degree of certainty about the potential future threats to the rock apron that would require an extremely conservative design, but rather "reasonable assurance" that the design will protect the tailings pile.

Assertion 5. The DRC disagrees with the NRC conclusion that the Atlas design provides the necessary protection of the tailings pile. DRC asserts that the apron design does not meet the requirements of 10 CFR Part 40, Appendix A.

As discussed in the TER and SR, the staff performed detailed evaluations of the proposed design. Based on those evaluations, the staff concludes that: (1) A conservative approach was taken by Atlas in its reclamation plan by assuming that the Colorado River would migrate to the tailings pile and by designing the erosion protection apron to account for that event; (2) the rock size of 11 inches proposed by Atlas for the rock apron is greater than the rock size of about 2.4 inches required to resist velocities produced by the Colorado River on the collapsed rock apron, based on the most conservative calculated channel velocity and considering the effects of channel curvature and increased shear forces on the outside of channel bends; (3) the volume of rock provided for the apron is acceptable; (4) the maximum river velocity that should be used for the design of the rock apron for reasonable assurance is approximately 5.2 feet per second (ft/sec), rather than the 6.9 ft/sec used by ACE; (5) the potentially increased density of vegetation and tamarisks in the floodplains of the river will not significantly affect river velocities in the channel; (6) the design parameters selected for use in the ACE calculations of rock size are very conservative and are not likely to reflect conditions that will exist at the rock apron, if the river were to migrate to the pile in the future; (7) cohesive soils that could adversely affect the performance of the apron are not significantly present; (8) the requirement of reasonable assurance of site stability for a period of 200–1000 years is met by the proposed apron design; (9) a post-licensing monitoring and maintenance

program will be implemented for this by the long-term custodian and will help to assure that requirements are continuously met and to assure that any unexpected problems occurring at the site will be promptly detected and mitigated; (10) the current design includes an over-designed volume of 5.3-inch rock on the side slope of the tailings pile that would be available to also launch into any gaps formed in the launched 11-inch rock; (11) the riprap for the side slopes is designed for a precipitation intensity approaching the world record rainfall intensity; and (12) the riprap layer thickness exceeds the design criteria routinely accepted by the staff; and (13) the rock sizes that will actually be constructed will likely exceed the sizes proposed by Atlas.

IV. Conclusions and Recommendations

The NRC staff has reviewed the concerns and issues raised in the State's Petition and has concluded that the rock apron design for the Atlas reclamation plan complies with 10 CFR Part 40, Appendix A. For the reasons discussed above, no basis exists for taking any action in response to the Petition. Accordingly, no action pursuant to Section 2.206 is being taken.

Dated at Rockville, Maryland, this 20th day of January, 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–1702 Filed 1–25–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. IM99–1; Order No. 1226]

International Mail Report

(Authority: 39 U.S.C. 3663)

AGENCY: Postal Rate Commission.

ACTION: Notice concerning international mail report.

SUMMARY: This document notes the establishment of a docket for matters related to the Commission's new annual international mail reporting responsibilities. It defers a formal rulemaking on permanent data submission requirements supporting this effort, but invites comments related to preparation of the initial report to Congress. These actions facilitate compliance with a new statutory provision requiring the Commission to prepare an annual report on international mail.

DATES: Initial written comments are due by January 29, 1999; reply comments are

due by February 5, 1999. See Supplementary Information for other dates.

ADDRESSES: Send comments to Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H St. NW., Suite 300, Washington, DC 20268–0001.

FOR MORE INFORMATION
CONTACT: Stephen L. Sharfman, General Counsel, 1333 H. St. NW., Washington, DC 20268–0001 at 202–789–6820.

SUPPLEMENTARY INFORMATION: On October 21, 1998, Public Law 105–277 was signed into law, adding section 3663 to the Postal Reorganization Act. This amendment requires that by July 1 of each year, the Commission transmit to the U.S. Congress a comprehensive report of costs, revenues, and volumes the Postal Service accrues in connection with mail matter conveyed between the United States and other countries for the prior fiscal year. It also requires the Service to provide, by March 15, data the Commission may need to prepare the report. It further directs that the data be in sufficient detail to enable the requisite analysis to be performed under methods the Commission determines appropriate for analysis of rates for domestic mail.

In recognition of this responsibility, the Commission issued order no. 1226 (January 15, 1999) establishing the docket designation "IM99–1" to refer to international mail and to reflect the unique, ongoing nature of the required report. The order also addressed the following matters.

Deferral of rulemaking given impending report deadline. On December 16, 1998, United Parcel Service (UPS) asked the Commission to institute a rulemaking to determine the data to be provided to the Commission and the methods to be used by the Commission in analyzing the costs, revenues, and volumes of each international mail product for the required report. UPS asserts that it has a vital interest in ensuring that Postal Service international products with which it competes are not subsidized by other Postal Service offerings. It notes that the GAO has recently reported that several of the Postal Service's competitive international mail products are currently being provided at a loss. It observes that analyzing the costs, volumes, and revenues of international mail is a new responsibility for the Commission, and argues that in deciding what data and what methods to use, the Commission is likely to benefit from the input of interests affected by international mail.

Section 3663 contemplates an ongoing responsibility of the Commission to analyze international mail costs and revenues. It therefore may be appropriate to establish permanent rules concerning data that the Postal Service should provide to enable the Commission to carry out this responsibility. However, it appears that initiating traditional procedures leading to the adoption of permanent data reporting rules would not be useful at this time, given the short period that remains for obtaining the data on which the initial study will be based.

Establishing permanent data reporting rules will involve a 5 U.S.C. 553 rulemaking of the type UPS suggests, but a rulemaking ordinarily requires more time than is available to obtain data for the initial report. The Commission must decide what data are necessary in advance of that deadline, and a rulemaking could delay identifying the information needed to prepare a report by July 1. Therefore, the Commission will defer establishing the rulemaking docket requested by UPS, although the Commission expects to initiate such an inquiry shortly after the July 1, 1999 report is completed.

Request for comments on data and other issues related to the annual report. Despite the short time remaining for identifying data necessary for preparing the first report, input from interested parties would be helpful, since the required report covers ground that is largely new to the Commission. Therefore, the Commission requests written comments on this topic on or before January 29, 1999, and reply comments on or before February 5, 1999. To facilitate replies, all comments will be made available on the Commission's website (www.prc.gov) as well as in the Commission's docket room.

To help interested parties focus their comments, the Commission invites them to identify the international mail products or services they believe should be analyzed in the report and to discuss their reasons for proposing the inclusion of these products. In that regard, an examination of relevant documents, including the International Mail Manual, USPS Publication 51, and the recent Government Accounting Office (GAO) report on new postal products (GAO/GGD-99-15), suggests that it might be appropriate for the report to consist of an analysis of the international products or services listed below. (This list appears as an attachment to order no. 1226.) Interested persons may wish to comment on whether this list is complete and

whether the level of disaggregation is appropriate.

Identification of candidate international mail products and services for purposes of 39 U.S.C. 3663. The list of candidate products and services includes: A. Inbound mail: letter and cards/AO; express; and parcels. B. Outbound mail: letters and cards (letters and letter packages; post cards and postal cards; and aerograms); other articles: printed matter, including small packets and matter for the blind (air and surface); M-bags (air and surface); parcel post (air and surface); express mail international service (EMS); international priority airmail (IPA); international surface airlift (ISAL); Valuepost/Canada; bulk letter service to Canada; global priority mail; global package link; global parcel services; direct entry; international customized mail (ICM); and international special services. C. Transit mail.

Supporting data; request for comments. The Postal Service annually compiles an International Cost and Revenue Analysis (ICRA) containing data on international mail services generally comparable to those presented in the CRA for domestic mail. The Commission believes the data in the ICRA are necessary to support the required report. Additionally, supporting data on international mail services comparable to those provided in the cost segments and components (CSC) report for domestic mail will be necessary to support the report. The Commission invites parties to identify any additional data that they believe are likely to be helpful or necessary. Questions of commercial sensitivity should not be an obstacle to submission of data for the Commission's analysis, since the Commission has procedures that allow it to maintain and analyze *in camera* data found to be commercially sensitive.

Finally, the Commission invites comments on any other issues that interested parties consider relevant to the Commission's duty to analyze and report on international mail costs, volumes, and revenues under 39 U.S.C. 3663.

Dated: January 21, 1999.

Margaret P. Crenshaw,
Secretary.

[FR Doc. 99-1778 Filed 1-25-99; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 10:00 a.m., Monday, February 1, 1999; 8:30 a.m., Tuesday, February 2, 1999.

PLACE: Naples, Florida, at the Registry Hotel, 475 Seagate Drive, in the Lalique I Room.

STATUS: February 1 (Closed); February 2 (Open).

MATTERS TO BE CONSIDERED:

Monday, February 1—10:00 a.m. (Closed)

1. Consideration of Delivery Confirmation Implementation Date.
2. Preliminary Annual Performance Plan Targets.
3. International Rates.
4. Strategic Alliance.
5. Office of the Inspector General FY 1999 Performance Plan.

Tuesday, February 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 4-5, 1999.
 2. Remarks of the Postmaster General/Chief Executive Officer.
 3. Appointment of Members to Board Committees.
- Tuesday, February 2—8:30 a.m. (Open) [Continued]*

4. Preliminary Annual Performance Plan.
 5. Fiscal Year 1998 Comprehensive Statement on Postal Operations.
 6. Quarterly Report on Service Performance.
 7. Quarterly Report on Financial Results.
 8. Capital Investments.
 - a. Small Parcel and Bundle Sorter (SPBS) Feed System.
 - b. 2,000 Trailers—Additional Funding Request.
 9. Report on the Southeast Area and Suncoast Performance Cluster.
 10. Tentative Agenda for the March 1-2, 1999, meeting in Washington, D.C.
- CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260-1000. Telephone (202) 268-4800.

Thomas J. Koerber,
Secretary.

[FR Doc. 99-1805 Filed 1-21-99; 4:54 p.m.]

BILLING CODE 7710-12-M

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-40954; File No. SR-NASD-98-91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Time Period for Filing Information Requests in Arbitration

January 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 8, 1998, the National Association of Securities Dealers, Inc., through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b-4 under the Exchange Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10321 of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to modify the earliest date to file document and information requests in arbitration proceedings from 20 business days to 45 calendar days after service of the Statement of Claim or upon filing of the Answer, whichever is earlier. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

RULES OF THE ASSOCIATION

* * * * *

**10000. CODE OF ARBITRATION
PROCEDURE**

* * * * *

10321. General Provisions Governing Pre-Hearing Proceedings

- (a) (No change)
- (b) Document Production and Information Exchange
 - (1) Any party may serve a written request for information or documents ("information request") upon another party [twenty (20) business] 45 *calendar* days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.
 - (2)-(4) (No change)
 - (c)-(e) (No change)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation 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

The proposed rule change is intended to modify the earliest date to file document and information requests in arbitration proceedings from 20 business days to 45 calendar days after service of the Statement of Claim or upon filing of the Answer, whichever is earlier, to coincide with the recently amended time period to file an Answer to the Statement of Claim.

In a previous filing approved by the Commission⁴ and effective on March 16, 1998, NASD Regulation enlarged the time to answer an arbitration claim from 20 business days to 45 calendar days, and eliminated extensions of time to answer except in extraordinary circumstances. That change was proposed because requests for

extensions of time were common, generally because respondents needed additional time to develop a complete answer to the claim. The extension of time to 45 days was designed to ease the administrative burden on NASD Regulation staff by eliminating the burden of processing and granting routine extensions of time.

NASD Regulation has determined that a related change is necessary to the rule on discovery in arbitration, Rule 10321, which currently permits requests for documents and information to be made 20 business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The 20-day period was originally intended to coincide with the time to answer claims, in order to prevent the respondent from having to respond to a discovery request before it had prepared its answer. Since the time to answer has been extended to 45 days, however, Rule 10321 could require a party to respond to a document request in 20 business days (approximately a month), which would be over two weeks before the party's answer was due. Therefore, to maintain the original purpose of the discovery time period, NASD Regulation proposes that the time period in Rule 10321 be extended to 45 calendar days as well.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, which requires, among other things, that the Association's rules must 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. The NASD believes that the proposed rule change will protect investors and the public interest by facilitating a more orderly discovery procedure for all parties.

(B) Self-Regulatory Organization's Statement of Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(e)(6).

⁴ Exchange Act Rel. No. 39664 (February 13, 1998) (File No. SR-NASD-98-07) 63 FR 8727 (February 20, 1998).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Association as a "non-controversial" rule change under Rule 19b-4(e)(6) under the Exchange Act.⁵ Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until January 11, 1999, more than 30 days from December 8, 1998, the date on which it was filed, and the NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(e)(6) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-98-91 and should be submitted by February 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-1699 Filed 1-25-99; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1511).

TIME AND DATE: 9 a.m. (EST), January 27, 1999.

PLACE: Chattanooga Office Complex, 110 Market Street, Chattanooga, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meetings held on December 9, 1998.

New Business

C—Energy

C1. Supplement to Contract No. 96X7C-108889-000 with Bailey Controls Company for genuine Bailey Controls spare parts, equipment, services, and training.

C2. Fixed-price contract with National Electric Coil for generator stator upgrades for various hydro plants.

C3. Contract with G-UB-MK Constructors for modification and supplemental maintenance work at TVA's Eastern Region fossil and hydro power generation facilities.

Information Items

1. Approval of recommendations for resolution of wage rate and other disputes with Laborers' International Union of North America.

2. Approval of implementation of the results of negotiations with the Public Safety Service Employees' Union over compensation for TVA annual employees for fiscal years 1999 and 2000.

3. Approval of recommendations resulting from the 63rd Annual Wage Conference, 1998—Construction Project Agreement Wage Rates.

4. Approval of termination of the Performance Incentive Plan.

5. Approval to file condemnation cases affecting the following transmission lines: Charleston District-Riceville, Bradley County, Tennessee; East Cleveland-Charleston District, Bradley County, Tennessee; Fulton-South Fulton, Itawamba County, Mississippi; Johnsonville-West Nashville Tap to Pomona and Burns, Dickson County, Tennessee; Oneida-

McCreary, Scott County, Tennessee; Oneida-McCreary, McCreary County, Kentucky; and Pinhook-Smyrna, Rutherford County, Tennessee.

6. Approval to enter into a nonexclusive license with Shilo Foods permitting Shilo Foods to practice and have practiced TVA's patent pending, reciprocating wetlands technology.

7. Sale of fee interest at public auction and sale of permanent easement to the United States Postal Service affecting approximately 20.21 acres of the White Bridge Road property in Davidson County, Tennessee, as well as a permanent easement over approximately 1.03 acres of adjoining land (Tract No. XNVSC-11, Parcels 1 and 2, and a portion of Tract No. XNVSC-6SU).

8. Grant of a permanent easement for electric system purposes affecting approximately 5.02 acres of the Russellville, Kentucky, Power Service Center, Logan County, Kentucky (Tract No. XRPSC-2).

9. Grant of a permanent easement to the Tennessee Department of Transportation affecting approximately 0.11 acre of Huntsville, Tennessee, Substation land, Scott County, Tennessee (Tract No. XHUNSS-1H).

10. Abandonment of transmission line easements and rights-of-way affecting approximately 8.16 acres in Giles County, Tennessee (Tract No. AP-104, Parcels A and B; Tract No. AP-105, Parcels A and B; and Tract No. PF-3, Parcels A, B, and C).

11. Sale of fee simple interest in approximately 2.88 acres of land located on the Toccoa River in Fannin County, Georgia, for purposes authorized in Section 4(k)(a) of the TVA Act (Tract No. XTOCA-1).

12. Sale of noncommercial, nonexclusive permanent easements to Claude Sylvester, Claude Dalton, Jr., and Charles Johnson for private water-use facilities affecting approximately 0.41 acre of land on Tellico Lake, Monroe County, Tennessee (Tract Nos. XTELR-204RE, -205RE, and -206RE).

13. Grant of a 30-year public recreation easement to Rhea County, Tennessee, for a public park affecting approximately 6 acres of land on Chickamauga Lake, Rhea County, Tennessee (Tract No. XTCR-195RE).

14. Grant of a permanent easement to the Siam Utility District for a well site, waterlines, utility lines, and an access road affecting approximately 0.11 acre of land on Wilbur Reservoir, Carter County, Tennessee (Tract No. XWIR-6U).

15. Award of a contract to General Electric Company (GE) for the rewind of the generator fields for the combustion

⁵ 17 CFR 240.19b-4(e)(6).

turbine units originally manufactured by GE.

16. Approval of the Chief Financial Officer's proposed Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1999, pursuant to Section 26 of the TVA Act.

17. Approval of the Chief Financial Officer's proposed Financial Statements for Fiscal Year 1998.

18. Approval to enter into a contract with Calgon Corporation for raw water and specialty chemicals, chemical treatment equipment, and for chemical treatment services at TVA Nuclear generating facilities for an amount not to exceed \$18 million.

19. Approval of recommendations resulting from the 63rd Annual Wage Conference, 1998—Annual Trades and Labor Agreement Wage Rates.

20. Approval for TVA to modify TVA's membership agreement (Contract No. TV-49086A) with the Electric Power Research Institute, Inc. (EPRI), to provide for TVA's membership on a multiyear basis.

For more information: Please call TVA Public Relations at (423) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999.

Dated: January 20, 1999.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 99-1804 Filed 1-21-99; 4:50 pm]

BILLING CODE 8120-08-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Aerospace Equipment (ISAC-1)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee (ISAC-1) will hold a meeting on January 26, 1999 from 11:00 a.m. to 4:00 p.m. The meeting will be open to the public from 11:00 a.m. to 11:15 a.m. and closed to the public from 11:15 a.m. to 4:00 p.m.

DATES: The meeting is scheduled for January 26, 1999, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room 4830, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Fred Elliot, Department of Commerce, 14th

St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482-1233 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St. N.W., Washington, D.C. 20508, (202) 395-6120.

SUPPLEMENTARY INFORMATION: The ISAC-1 will hold a meeting on January 26, 1999 from 11:00 a.m. to 4:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 11:15 a.m. to 4:00 p.m. The meeting will be open to the public and press from 11:00 a.m. to 11:15 a.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committees will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 99-1748 Filed 1-25-99; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-1999-4999]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Transportation has renewed the charter for the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) to remain in effect for a period of 2 years from December 10, 1998, until December 10, 2000. CFIVAC is a federal advisory committee constituted under 5 U.S.C. App. 2. Its purpose is to provide advice and make recommendations to the Coast Guard on the safe operation of commercial fishing vessels.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Mark Prescott, Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone 202-267-0214, fax 202-267-4570. For questions on viewing the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202-366-9329.

Dated: January 15, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99-1694 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 23- XX-26, Powerplant Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) 23-XX-26, and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 23-XX-26. This proposed AC provides information and guidance concerning acceptable means, but not the only means, of compliance with Title 14 of the Code of Federal Regulations, part 23 (14 CFR part 23), subpart E, which is applicable to the powerplant installation in normal, utility, acrobatic, and commuter category airplanes. This proposed AC consolidates existing policy documents and certain AC's that cover specific paragraphs of the regulations, into a single document.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Scott Sedgwick, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone (816) 426-6941; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of this proposed AC by contacting the person named above under the **FOR FURTHER INFORMATION CONTACT** section. We invite interested parties to submit comments on the proposed AC. Commenters must identify the AC title and number when submitting any comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

The proposed AC is current policy and guidance through Amendment 23-51, effective March 11, 1996. This material spans approximately 30 years of Federal Aviation Administration (FAA) and Civil Aviation Authority (CAA) history.

Issued in Kansas City, Missouri, on January 13, 1999.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-1734 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-M

through the Internet at the following Uniform Resource Location (URL): <http://www.faa.gov/avr/afs/acs/fscap.pdf>. The file name is "FSCAP.pdf". Interested persons are invited to comment on the draft AC either by submitting such written data, views, or arguments as they may desire to: Federal Aviation Administration, Continuous Airworthiness Maintenance Division, AFS-300, 800 Independence Avenue, SW., Washington, DC 20591, attention Al Michaels; or, E-mail Al Michaels at Albert.Michaels@faa.gov. Commenters should identify FSCAP AC, Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts, Engines, and Propellers to the address specified above. All comments will be considered by the Continuous Airworthiness Maintenance Division, AFS-300, before issuing the final AC. Comments may be inspected at the above address between 9:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Al Michaels, AFS-300, at the above address, or telephone (202) 267-8203, or facsimile (202) 267-5115.

Issued in Washington, DC on January 19, 1999.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

[FR Doc. 99-1741 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-M

15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas J. Lando, City Manager/Airport Manager of the Chico Municipal Airport, at the following address: 411 Main Street, Chico, CA 95927. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Chico under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303, Telephone: (650) 876-2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 8, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Chico was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 8, 1999.

The following is a brief overview of the impose and use application No. 99-03-C-00-CIC.

Level of proposed PFC: \$3.00.

Proposed charge effective date: June 1, 1999.

Proposed charge expiration date: March 1, 2001.

Total estimated PFC revenue: \$89,300.

Brief description of the proposed projects: Terminal Building Improvements and Passenger Boarding Ramp/Lift.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[AC No. 20-XX FSCAP]

Proposed Advisory Circular (AC) on Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts (FSCAP), Engines, and Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed FSCAP AC; extension of comment period.

SUMMARY: On December 7, 1998, the FAA announced the availability of and requested comments on a proposed AC pertaining to guidance for use in determining the eligibility of and evaluating U.S. military surplus flight safety critical aircraft parts for installation on U.S. type certified products. This notice announces the extension of the comment period.

DATES: Comments must be received on or before March 5, 1999.

ADDRESSES: A copy of the proposed AC may be obtained by downloading

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Chico Municipal Airport, Chico, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 25, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division,

application, notice and other documents germane to the application in person at the city of Chico.

Issued in Hawthorne, California, on January 8, 1999.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 99-1735 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-99-5019]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announce the Marine Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before March 29, 1999.

FOR FURTHER INFORMATION CONTACT:

Christopher Krusa, Office of Maritime Labor, Training, and Safety, Maritime Administration, MAR-250, Room 7302, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202-366-2648 or fax 202-493-2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Supplementary Training Course Application.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2133-0030.

Form Number: MA-823.

Expiration Date of Approval: October 31, 1999.

Summary of Collection of Information: Section 1305 (a) of the Maritime Education and Training Act of 1980 states that the Secretary may provide additional training on maritime subjects and may make such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine. Also, the U.S. Coast Guard (USCG) requires a fire fighting certificate for U.S. merchant marine officers, effective December 1989, pursuant to 46 CFR 10.205(g) and 10.207(f).

Need and Use of the Information: This information collection is necessary

for eligibility assessment, enrollment, attendance verification and recordation. Without this information, the courses would not be documented for future reference by the program or individual student. This application form is the only document of record and is used to verify that students have attended the course.

Description of Respondents: U.S. Merchant Seamen, both officers and unlicensed personnel, and other U.S. citizens employed in other areas of waterborne commerce.

Annual Responses: 2,000 responses.

Annual Burden: 100 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., ET. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov>.

By Order of the Maritime Administrator.

Dated: January 21, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99-1771 Filed 1-25-99; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98-4603, Notice 1]

Ford Motor Company; Receipt of Application for Determination of Inconsequential Non-Compliance

Ford Motor Company, of Dearborn, Michigan, has applied to the Administrator, for exemption from the notice and remedy requirements of this application concerning certain 1998 model year Ford F150, F250, Expedition vehicles, and Lincoln Navigator vehicles, which have sun visor air bag warning labels that do not fully meet the location requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208 "Occupant Crash Protection."

Pursuant to Part 573 of Title 49 of the Code of Federal Regulations, Defect and Noncompliance Reports, Ford Motor Company submits the following information concerning a safety-compliance action that it is initiating.

This notice of receipt of an application is published under 49 U.S.C. § 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4.5.1(b)(3) of FMVSS 208 specifies "Except for the information on an air bag maintenance label placed on the sun visor pursuant to S4.5.1(a) of this standard, no other information will appear on the same side of the sun visor to which the sun visor warning label is affixed." Ford manufactured approximately 91,600 vehicles in total (certain F150, F250, and Expedition 4X4 models, and certain Lincoln Navigator 4X4 and 4X2 models) from February 13, 1998 through May 21, 1998, that did not comply with this requirement. The affected 4X4 models were built with driver sun visors with air bag warning labels and 49 CFR 575.105 (c)(1) utility vehicle labels both affixed to the same sun visor side. The affected Lincoln Navigators equipped with moonroofs (both the 4X4 and 4X2 models) were built with a temporary paper label for the garage door opener transmitter *also* located on this same side of the visor.

The noncompliance was created when Ford implemented a sun visor label running change on February 13, 1998, for the affected vehicles. Prior to the change, the air bag alert label specified in FMVSS 208 S4.5.1(c), along with the 575.105(c)(1) utility vehicle label on the 4X4 models, and the garage door opener transmitter label on the moonroof equipped Navigator 4X4 and 4X2 models, were affixed to the driver sun visor on the side visible with the visor in the stowed position. The air bag warning label on these vehicles was affixed to the opposite side of the visor with no other labels located on this opposite side. The label running change eliminated the air bag alert label, and the air bag warning label was located in its place on the side of the visor visible when stowed. However, the utility vehicle label already located on that side of the visor on the 4X4 models, and the garage door transmitter label located on the side directly below the transmitter controls on the moonroof equipped Navigator visors, were not relocated.

Ford argued that, based on rulemaking history, the intent of the FMVSS 208 air bag warning label location requirement is to ensure that customers have access to important air

bag safety information, and to avoid "information overload" that could blunt the impact of this air bag information. The basic question with regard to these non-compliant vehicles is, therefore, does the presence of the utility vehicle label on the transmitter label on the same side of the visor as the air bag warning label actually detract from motor vehicle safety, and further, would the removal of the utility vehicle label and the garage door opener transmitter label from these vehicles enhance motor vehicle safety? Removal of the utility vehicle label is a possible field fix since the affected vehicles all have wheelbases that exceed 110 inches. Even though the utility vehicle label is *required* only on these types of vehicles with wheelbases of 110 inches or less, Ford nevertheless believes the information on the label may also be beneficial in utility vehicles with over 110 inch wheelbase, and affixes the labels to these vehicles also. The transmitter label is a temporary paper stick-on label intended to be removed by the customer, and in all likelihood is removed early in the life of the vehicle. It is provided merely as a customer convenience and directs the customer to operational instructions provided in the Owner Guide. Ford believes this is beneficial to the vehicle operator.

Supporting Arguments

For the following reasons, in Ford's view, the presence on the driver visor of the utility vehicle label or the transmitter label does not significantly detract from the air bag warning, and has no consequential effect on motor vehicle safety. First, the warning label is prominently displayed on both the driver and passenger visor, on the side visible when the visor is stowed. The label is thus visible the majority of the time. Second, the revisions to the air bag label requirements published on November 27, 1996—the addition of a pictogram, specified minimum area for message text, colors for a pictogram, text, and background—have effectively increased the air bag label's prominence and readability such that the presence of this utility vehicle label or the transmitter label, both of which are uniquely different in appearance from the air bag warning label, is unlikely to detract from the much more prominent air bag label. Finally, the affected vehicles do not require and are not equipped with the air bag maintenance label specified in S4.5.1(a) and, consequently, the air bag warning label need not compete with this maintenance label, thus reducing that potential for "information overload." In addition, the fact that S4.5.1(a) allows

the air bag maintenance label to be placed on the same side of the visor with the air bag warning label provides explicit recognition by the agency that the risk of "information overload" from other labels on the visor is manageable. Based on these facts, Ford believes that the effectiveness of the air bag warning label is not significantly diluted by the presence of the utility vehicle label. They believe the same is true with regard to the temporary presence of the transmitter label.

Ford offers the following concerning the question of whether removal of the utility vehicle label or the transmitter label from the affected vehicle enhances motor vehicle safety. With regard to the utility vehicle label, the industry and the agency have and are considering, whether the presence of this label along with the air bag warning label, do in fact reduce the effectiveness of the air bag label. There is not complete agreement on this subject as evidenced by rulemaking including a January 13, 1997 AAMA Request for Technical Amendment or Petition for Reconsideration, to allow both labels on the same side of the visor—this request/petition was denied by the agency on June 24, 1998 (49 CFR 575.208). Citation for utility vehicles NPRM 63 FR 17974 April 13, 1998, Docket No. NHTSA 98–3381, Notice 1.

The transmitter label on the Navigators' vehicles on the other hand, a paper stick-on label which directs the customer to the Owner Guide for instructions on the operation of the transmitter controls on the visor, is not intended to be permanent, but is designed as a temporary label with the expectation that it will be removed early in the life of the vehicle. Because its early removal is intended, Ford does not argue that a field action to remove this label would be detrimental to safety, however, because Ford believes it will be removed by the customer, or by the dealer after review with the customer during delivery of the vehicle, Ford suggests there is no need for such a field action.

As a final point, the subject utility vehicle and transmitter labels, rather than being affixed, as they are, on the driver visors no closer than 2 inches from the air bag warning label, which does not satisfy Standard 208, alternatively could have been affixed to the vehicle headliner immediately above and approximately 2 inches away from the visor air bag label. This alternative would have been completely compliant with Standard 208, even though the proximity of these labels to the air bag warning label would have been essentially the same as with the

non-compliant location on the visor. If, in this alternate compliant location, the air bag warning label is not diluted by the presence of the utility vehicle or transmitter label on the headliner, perhaps 2 inches away, Ford suggests that the air bag warning label is not diluted by the technically non-compliant presence on the visor of these labels which also are approximately 2 inches away from the air bag label.

In summary, Ford believes that the presence of the utility vehicle label or the garage door opener transmitter located two inches or more from the air bag warning label, does not constitute "information overload," nor does it present any risk to motor vehicle safety. Ford requests that the agency find this condition to be inconsequential to motor vehicle safety, and accordingly that Ford be exempted from the notice and remedy requirements of the Code. Ford has attached to this petition their June 23, 1998 letter to the agency advising of this condition, and of Ford's intent to petition for a determination of inconsequential noncompliance.

Interested persons are invited to submit written data, views and arguments on the application of Ford, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL 401 Seventh Street, SW, Washington, DC 20590. It is requested but not required that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 25, 1999. (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 19, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–1744 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 19, 1999.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 25, 1999 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions Fund (CDFI)

OMB Number: 1505-0154.

Form Number: None.

Type of Review: Extension.

Title: Community Development Financial Institutions Program.

Description: The purpose of the CDFI Program is to promote economic revitalization community development through investment in and assistance to CDFIs. The investments by the Program are intended to facilitate the creation of a national network of financial institutions that is dedicated to community development.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 410.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—36-51 hours.

Core and Intermediary—100 hours.

Technical Assistance—50 hours.

Certification Only—15 hours.

Recertification—7 hours.

Frequency of Response: Quarterly, Annually.

Estimated Total Reporting/Recordkeeping Burden: 32,570 hours.

Clearance Officer: Lois K. Holland (202) 622-1563 Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 99-1729 Filed 1-25-99; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

**Submission for OMB Review;
Comment Request**

January 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 25, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512-0507.

Form Number: ATF F 5300.26.

Type of Review: Extension.

Title: Federal Firearms and Ammunition Excise Tax.

Description: This information is needed to determine how much tax is owed for firearms and ammunition. ATF uses this information to verify that a taxpayer has correctly determined and paid tax liability on the sale or use of firearms and ammunition. Businesses, including small to large, and individuals may be required to used this form.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 965.

Estimated Burden Hours Per Respondent: 7 hours.

Frequency of Response: Quarterly, Other (annual if no tax is due).

Estimated Total Reporting Burden: 27,020 hours.

OMB Number: 1512-0548.

Form Number: ATF F 6410.1.

Type of Review: Extension.

Title: Gang Resistance Education and Training Funding Application.

Description: State and local law enforcement agencies desiring financial assistance for the G.R.E.A.T. Program will submit ATF F 6410.1 to the ATF G.R.E.A.T. Branch. The information collected will be used by ATF to evaluate the applicants funding need. The information will also be used to determine funding priorities and levels of funding, as required by law.

Respondent: State, Local or Tribal Government.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 800 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 99-1730 Filed 1-25-99; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

**Submission for OMB Review;
Comment Request**

January 11, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 25, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1624.

Notice Number: IRS Notice 98-52.

Type of Review: Extension.

Title: Nondiscriminatory Safe Harbors; ADP Test; ACP Test.

Description: Section 1433(a) of the Small Business Job Protection of 1996 requires that the Service provide nondiscriminatory safe harbors with respect to section 401(k)(12) and section (m)(11) for plan years beginning after December 31, 1998. This notice implements that statutory requirement.

Respondents: Business and other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 1 hour, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 80,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 99-1731 Filed 1-25-99; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 25, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1548.

Revenue Procedure Number: Revenue Procedure 98-55.

Type of Review: Extension.

Title: Late Election Relief for S Corporations.

Description: The IRS will use the information provided by taxpayers under this revenue procedure to determine whether relief should be granted for the relevant late election.

Respondents: Business and other for-profit.

Estimated Number of Respondents/Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 99-1732 Filed 1-25-99; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102-10]

Designation of Chief Information Officer for the Department of the Treasury

January 13, 1999.

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b), 44 U.S.C. 3506, and sections 5125 and 5131 of the Clinger-Cohen Act of 1996 (Division E of Pub. Law 104-106), it is hereby ordered that:

1. The Deputy Assistant Secretary (Information Systems) is designated as the Chief Information Officer of the Department.

2. The Chief Information Officer shall carry out:

a. The general responsibilities and the duties specified in sections 5125(b) and (c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1425 (b) and (c));

b. The responsibilities of the Department under chapter 35 of title 44, U.S.C., titled "Coordination of Federal Information Policy"; and

c. The Chief Information Officer management responsibilities designated in Executive Order 13011, dated July 16, 1996;

3. The Assistant Secretary for Management and Chief Financial Officer may assign to the Chief Information Officer other functions and responsibilities which are not inconsistent with paragraph 2.

4. Pursuant to section 5131(c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441(c)), I redelegate to the Chief Information Officer the authority to waive compulsory and binding Federal Information Processing Standards (FIPS) which has been delegated to the Secretary of the Treasury by the Secretary of Commerce. Any such waiver by the Chief Information Officer shall be made in conformity with the criteria and requirements for a waiver in: (a) section 5131; and (b) any applicable issuances of the Department of Commerce. This authority may not be redelegated by the Chief Information Officer.

5. The Chief Information Officer shall have direct access to the Secretary with respect to matters within paragraph 2.b.

6. *Cancellation.* Treasury Order 102-10, "Delegation of Authority to the

Deputy Assistant Secretary (Information Systems)," dated September 29, 1994.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 99-1670 Filed 1-25-99; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 15-54]

Delegation of Authority to the Director, United States Secret Service, To Investigate Violations of 18 U.S.C. 1956 and 1957

January 19, 1999.

1. *Purpose.* This Directive delegates to the Director, United States Secret Service, authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e), 1957(e), and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101-05, there is hereby delegated to the Director, United States Secret Service:

a. investigatory authority over violations of 18 U.S.C. 1956 and 1957 involving an offense under: 18 U.S.C. 215 (relating to commissions or gifts for procuring loans); 18 U.S.C. 471-473 (counterfeiting of obligations or securities of the United States); 18 U.S.C. 500-503 (counterfeiting of blank or postal money orders, postage stamps, foreign government postage and revenue stamps, and postmarking stamps); 18 U.S.C. 513 (relating to securities of States and private entities); 18 U.S.C. 641 (relating to public money, property, or records); 18 U.S.C. 656 (involving theft, embezzlement or misapplication by a bank officer or employee); 18 U.S.C. 657 (relating to lending, credit, and insurance institutions); 18 U.S.C. 658 (property mortgaged or pledged to farm credit agencies); 18 U.S.C. 1005 (fraudulent bank entries); 18 U.S.C. 1006 (relating to fraudulent federal credit institution entries); 18 U.S.C. 1007 (relating to Federal Deposit Insurance Corporation transactions); 18 U.S.C. 1014 (relating to fraudulent loan and credit applications); 18 U.S.C. 1029 (fraud and related activity in connection with access devices); 18 U.S.C. 1032 (relating to concealment of assets from a conservator, receiver, or liquidating agent of a financial institution); 18 U.S.C. 1341 (relating to mail fraud); 18 U.S.C. 1343 (relating to wire fraud); 18 U.S.C. 1344 (relating to bank fraud); 18 U.S.C. 1510 (obstruction of criminal investigations); 18 U.S.C. 1512 (tampering with a witness, victim or

informant); 18 U.S.C. 1513 (retaliating against a witness, victim, or an informant); 18 U.S.C. 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises); 18 U.S.C. 1956 (C) (7) (B) (iii) (relating to an offense against a foreign nation involving any scheme or attempt to defraud, by or against a foreign bank when the financial transaction occurs in whole or in part in the United States); 18 U.S.C. 2314 (transportation of stolen goods, securities, or counterfeiting articles); 18 U.S.C. 2315 (sale or receipt of stolen goods or securities); or any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than \$5,000; and

b. seizure and forfeiture authority and related authority under 18 U.S.C. 981 and 984 relating to violations of 1956 or 1957 that are within the investigatory jurisdiction of Secret Service under paragraph 2.a., and seizure authority under 18 U.S.C. 981 and 984 relating to any other violations of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 and 984 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Director, United States Secret Service, is authorized to remit or mitigate forfeitures of property valued at not more than \$500,000 seized pursuant to paragraph 2.b.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. *Coordination.*

a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, Secret Service discovers evidence of a matter within the jurisdiction of another Treasury bureau, Secret Service shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. Secret Service shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the sole investigatory jurisdiction of a Department of Justice bureau or the Postal Service, Secret

Service shall adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or pursuant to any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, Secret Service shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Ratification.* To the extent that any action heretofore taken consistent with this Directive may require ratification, it is hereby approved and ratified.

7. *Authorities.*

a. 18 U.S.C. 981, 1952, 1956, 1957, 1961, and 2341–2346.

b. 31 U.S.C. 5311–5326 (other than violations of 31 U.S.C. 5316).

c. 22 U.S.C. 2778.

d. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated October 29, 1998, or successor documents.

e. TO 102–14, "Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992," dated January 10, 1995, or successor documents.

8. *Cancellation.* Treasury Directive 15–54, "Delegation of Authority to the Director, United States Secret Service to Investigate Violations of 18 U.S.C. 1956 and 1957," dated September 11, 1995, and the memorandum "Delegation of Authority to the Director, United States Secret Service, to Investigate Violations of 18 U.S.C. 1956 and 1957," dated February 5, 1996, are superseded.

9. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or canceled prior to that date.

10. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

James E. Johnson,

Under Secretary (Enforcement).

[FR Doc. 99–1733 Filed 1–25–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102–15]

Delegation of Authority To Invoke National Security Emergency Preparedness Treatment for Telecommunications Services

January 13, 1999.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b); Executive Order 12472, dated April 3, 1984; 47 CFR Part 64, Appendix A; and National Communications Systems (NCS) Directive 3–1 dated July 5, 1990, it is hereby ordered that:

1. The Deputy Assistant Secretary (Information Systems) and Chief Information Officer and the Director, Office of Corporate Systems Management, are each delegated authority to invoke National Security Emergency Preparedness treatment for the priority provisioning of telecommunications services from the Manager, NCS, and from concerned service vendors, on behalf of the Department or any of its bureaus; and

2. Upon issuance of this Order, and thereafter whenever required pursuant to NCS directives, the Assistant Secretary for Management and Chief Financial Officer shall prepare, for execution by the appropriate official, the necessary correspondence notifying NCS of the individuals authorized to invoke National Security Emergency Preparedness treatment.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 99–1671 Filed 1–25–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 115–01]

Office of the Treasury Inspector General for Tax Administration

January 14, 1999.

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. § 321(b), 5 U.S.C. § 301 and § 302; and the authority contained in the Inspector General Act of 1978, 5 U.S.C. App. 3 (the I.G. Act), and the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, it is hereby ordered as follows.

1. Office of the Treasury Inspector for Tax Administration

a. There is within the Department of the Treasury an Office of the Treasury Inspector General for Tax Administration (OTIGTA). The OTIGTA

shall be headed by an Inspector General who is appointed by the President and who shall report to and be under the general supervision of the Secretary of the Treasury and the Deputy Secretary.

b. The Treasury Inspector General for Tax Administration (TIGTA) shall exercise all duties and responsibilities of an Inspector General with respect to the Department and the Secretary on all matters relating to the Internal Revenue Service (IRS). The TIGTA shall have sole authority under the I.G. Act to conduct an audit or investigation of the IRS Oversight Board, and the Office of Chief Counsel of the IRS (Office of Chief Counsel). (Hereafter the IRS Oversight Board and the Office of Chief Counsel are referred to as the "Related Entities".) All the powers and responsibilities of the IRS Office of Chief Inspector, except for the conducting of background checks and the providing of physical security, are transferred to the TIGTA.

c. The OTIGTA shall be placed organizationally within the Departmental Offices but shall be independent of the Departmental Offices and all other offices and bureaus within the Department.

d. It shall be the duty and responsibility of the TIGTA to:

(1) Provide policy direction for, and conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the IRS and Related Entities;

(2) Review existing and proposed legislation and regulations relating to the programs and operations of the IRS and Related Entities, and make recommendations in the semiannual reports required by § 5(a) of the I.G. Act concerning the impact of such legislation and regulations on the economy and efficiency in the administration of programs and operations administered or financed by the IRS and Related Entities or the prevention and detection of fraud and abuse in such programs and operations;

(3) Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the IRS and Related Entities for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, their programs and operations;

(4) Recommend policies for, and conduct, supervise, or coordinate relationships between the IRS and Related Entities and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to all matters relating to the promotion of economy and efficiency in administration of, or the prevention and detection of fraud and abuse in, the

programs and operations administered or financed by the IRS and Related Entities; or the identification and prosecution of participants in such fraud or abuse;

(5) Recommend actions to resolve fraud and other serious problems, abuses and deficiencies in the programs and operations of the IRS and Related Entities; and inform the Secretary and the Congress, fully and currently, of these problems and the progress made resolving these problems; and,

(6) Protect the IRS and Related Entities against external attempts to corrupt or threaten their employees except that the TIGTA shall not, with respect to employees of the IRS and Related Entities, conduct background checks or provide physical security.

e. The duties and responsibilities described in paragraph 1.d. shall not be construed to impair or reduce the responsibilities of program managers in the IRS and Related Entities to ensure that programs are administered in an economic and efficient manner and that such programs are protected against waste, fraud and abuse. Similarly, paragraph 1.d. shall not be construed to prevent program managers in the IRS and Related Entities from coordinating with other agencies in fulfilling the managers' responsibilities for proper administration of programs.

f. An audit or investigation conducted by the TIGTA shall not affect the final decision of the Secretary or his delegate under 26 U.S.C. § 6406.

g. The TIGTA shall not assume responsibility for any program operating responsibility of the IRS or Related Entities.

2. Audit and Investigative Matters

a. In executing the functions of an Inspector General, the TIGTA is authorized to:

(1) Access return and return information, as defined in 26 U.S.C. § 6103(b), only in accordance with the provisions of 26 U.S.C. § 6103 and the I.G. Act;

(2) Access all facilities of the IRS and Related Entities, including computer facilities and computer rooms, electronic data bases and files, electronic and paper records, reports and documents, and other material available to the IRS and Related Entities which relate to their programs and operations; and, when access is necessary to execute a function of the TIGTA pertaining to a matter within the jurisdiction of the TIGTA, all similar facilities throughout the Department.

(3) Make such investigations and reports relating to the administration of the programs and operations of the IRS

and Related Entities as are, in the judgment of the TIGTA, necessary or desirable;

(4) Request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by the I.G. Act from any Federal, State, or local government agency or unit thereof;

(5) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of functions assigned by the I.G. Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate U.S. district court: provided, that procedures other than subpoenas shall be used by the TIGTA to obtain documents and information from Federal agencies;

(6) Administer to or take from any person an oath, affirmation, or affidavit whenever necessary for the performance of TIGTA functions, which oath, affirmation, or affidavit when administered or taken by or before a OTIGTA employee designated by the TIGTA shall have the same force and effect as if administered or taken by or before an officer having a seal;

(7) Enforce criminal provisions of the internal revenue laws, other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, or any other law for which the Secretary has delegated investigative authority to the IRS pursuant to section 8D(k)(1)(A) of the I.G. Act. The TIGTA and the Commissioner of the IRS (Commissioner) will establish policies and procedures to ensure that the TIGTA's and the Commissioner's responsibilities to investigate alleged offenses under the internal revenue laws and related statutes are delineated clearly;

(8) Carry firearms, and perform the following functions set out in 26 U.S.C. § 7608(b)(2):

(a) Execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under the authority of the United States;

(b) Make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in the OTIGTA employee's presence, or for any felony cognizable under such laws if there are reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and,

(c) Make seizures of property subject to forfeiture under the internal revenue laws;

(9) Report any reasonable grounds believed to be a violation of Federal criminal law to the Attorney General of the United States in accordance with sections 4(d) and 8D(k)(2) of the I.G. Act, subject to 26 U.S.C. § 6103;

(10) Investigate violations of 31 U.S.C. § 333 involving the misuse of the name or symbol of the IRS; the title of any IRS employee; the name or symbol of the Department of the Treasury in connection with internal revenue laws; or the title of any Treasury employee in connection with the activities of the IRS and Related Entities;

(11) Make determinations and issue orders, pursuant to 18 U.S.C. § 6001-§ 6005, with the approval of the Attorney General, to compel the testimony under a grant of immunity of any individual who has been or may be called to testify or provide information at any proceeding before the IRS which such individual refuses to give or provide on the basis of the individual's privilege against self-incrimination; and,

(12) Use the investigative, seizure and forfeiture authority under the Money Laundering and Control Act of 1986, 18 U.S.C. § 1956-§ 1957, where the underlying conduct is subject to investigation under the I.G. Act.

b. The TIGTA shall provide or arrange for audit services for contracts awarded by the IRS and Related Entities.

c. The TIGTA shall receive, investigate and prepare final investigative reports for the Secretary or his designate on matters referred to the Department by the Office of Special Counsel regarding allegations of prohibited personnel practices related to personnel of the IRS and Related Entities.

3. Other Matters

a. The TIGTA is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the OTIGTA subject to the provisions of Title 5, U.S.C., governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

b. The TIGTA may exercise any and all administrative functions attendant upon this personnel authority except those authorities and functions assigned by law to the Secretary which may not be delegated.

c. The TIGTA is authorized to exercise all authorities granted to an "appointing authority" pursuant to Title 5, U.S.C. as those authorities pertain to SES members or positions which are or would be within the OTIGTA. With

regard to authorities accorded by law to the Department or the Secretary that pertain to SES members or positions, the TIGTA shall be under the general supervision of the Secretary and the Deputy Secretary and no other Departmental official.

d. The TIGTA is authorized to obtain services as authorized by 5 U.S.C. § 3109 at daily rates not to exceed the highest rate prescribed in the General Schedule by 5 U.S.C. § 5332.

e. Each fiscal year, the TIGTA shall submit to the Secretary a request for a separate appropriation account as contemplated by 31 U.S.C. § 1105(a)(25). The staffing and funding level transmitted to Office of Management and Budget for the TIGTA shall be subject to final determination by the Secretary or the Deputy Secretary.

f. To the extent and in such amounts as may be provided in advance by appropriations Acts, the TIGTA may enter into contracts and other arrangements for audits, studies, analyses, and other services, and make such payments as may be necessary to carry out the TIGTA's mission.

g. The TIGTA shall take all appropriate actions in response to a recommendation by the Office of Special Counsel with respect to TIGTA employees.

h. The TIGTA shall issue final decisions on administrative appeals under 5 U.S.C. § 552 and § 552a with respect to records that are within the custody of the OTIGTA.

i. The Secretary shall provide the TIGTA with adequate and appropriate office space at the Departmental Offices, IRS headquarters and IRS field office locations, together with such equipment, office supplies, communications facilities and services necessary for the effective operation of such offices, and will ensure necessary maintenance services for such offices, equipment, and facilities.

j. Pursuant to section 8D(b)(3) of the I.G. Act, the Inspector General of the Department of the Treasury and the TIGTA, within six months of the appointment of the TIGTA, shall develop procedures to:

(1) Determine how audits and investigations are allocated in cases of overlapping jurisdiction; and

(2) Provide for coordination, cooperation and efficiency in the conduct of such audits and investigations.

4. TIGTA Reporting Requirements

a. Pursuant to § 5(a) of the I.G. Act, the TIGTA shall, no later than April 30 and October 31 of each year, prepare

semiannual reports for the Secretary to transmit to Congress.

(1) Such reports shall summarize the activities of the OTIGTA during the immediately preceding six-month periods ending March 31 and September 30.

(2) In addition to including the information described in § 5(a) of the I.G. Act, the semiannual reports shall contain information to fulfill the additional reporting requirements contained in 26 U.S.C. § 7803(d).

b. In the event that the TIGTA becomes aware of a particularly serious or flagrant problem, abuse or deficiency relating to the administration of programs and operations of the IRS or Related Entities, the TIGTA, pursuant to § 5(d) of the I.G. Act, shall report immediately to the Secretary or the Deputy Secretary.

(1) Such report shall be transmitted to the appropriate committees or subcommittees of Congress, the Commissioner, and the IRS Oversight Board (Board) within seven calendar days, together with a report from the Secretary containing any comments the Secretary deems appropriate.

(2) The required report may be transmitted at a time determined appropriate by the Secretary if the problem, abuse, or deficiency relates to the performance of a law enforcement function under § 8D(k)(1)(A) of the I.G. Act, and other sensitive information as described in § 8D(a)(1)(A) through (F) of the I.G. Act.

c. In addition to these reporting requirements, the TIGTA, pursuant to § 8D(l)(2) of the I.G. Act, shall:

(1) Timely submit to the Commissioner and the Board any final report of audit conducted by the TIGTA; and,

(2) Periodically submit to the Commissioner and the Board a list of investigations for which a final report has been completed, and shall provide, upon request, a copy of any such report to the Commissioner or the Board.

d. Pursuant to 26 U.S.C.

§ 6103(h)(5)(B), if the TIGTA or the Commissioner prepares any report or other matter for the Board in order to assist the Board in carrying out its duties, and the TIGTA or the Commissioner determines it is necessary to include any return or return information in such report or other matter to enable the Board to carry such duties, such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out the Board's official duties.

e. Pursuant to Executive Order No. 12863, September 13, 1993, and No. 12333, December 4, 1981, the TIGTA, together with the General Counsel, to the extent permitted by law, shall report to the President's Intelligence Oversight Board concerning intelligence activities of the IRS and Related Entities where there is reason to believe the activities may be unlawful or contrary to Executive Order or Presidential Directive.

5. Responsibilities of Department of Treasury Personnel

a. All employees of the Department of the Treasury, including IRS and Office of Chief Counsel personnel, and members and staff of the Board, shall promptly and directly report to the OTIGTA, on matters under TIGTA authority:

(1) Complaints or information concerning the possible existence of any activity related to the IRS or Related Entities that constitutes a violation of law, including bribery overtures, or any other corrupt or threatening action to the extent it is within the TIGTA's jurisdiction;

(2) Complaints or information related to programs and operations of IRS or Related Entities concerning mismanagement; gross waste of funds; abuse of authority or violation of a taxpayer's rights; violations of regulations, including ethics regulations; or a substantial and specific danger to the public health and safety;

(3) Any unauthorized request from, or unauthorized disclosure of return or return information to, Board members, employees or detailees, which is prohibited by 26 U.S.C. § 6103(h)(5)(A);

(4) Any unlawful request by the President, Vice President, employees of the executive offices of either the President or Vice President, or any individual (except the Attorney General) serving in a position specified in 5 U.S.C. § 5312 (generally Cabinet level positions), that any IRS employee conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer, which is prohibited by 26 U.S.C. § 7217; and,

(5) Any matters that raise questions of propriety or legality under Executive Orders 12863 and 12333 regarding the conduct of United States intelligence activities with respect to IRS and Related Entities programs and operations.

b. Any employee of the Department of the Treasury, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or

threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to the TIGTA, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

c. No employee of the Department of the Treasury shall prevent or prohibit the TIGTA from initiating, carrying out, or completing any audit or investigation of a matter within the jurisdiction of the TIGTA, or from issuing any subpoena during the course of any such audit or investigation.

d. In carrying out their official duties, OTIGTA personnel shall have the full cooperation of employees of the Department of the Treasury and shall have full and prompt access to facilities, property, electronic or paper records, documents, correspondence, data, and computer systems, as such access is defined in paragraph 2.a.(2) of this Order.

e. Employees of the Department of the Treasury shall maintain in confidence all communications with OTIGTA employees when requested to do so, unless required or permitted by law to disclose, and shall not discuss any pending OTIGTA investigation with the subject(s) of the investigation or the subject's representatives unless required or permitted by law.

6. Responsibilities of OTIGTA Personnel

a. Whenever information or assistance requested under paragraphs 2.a.(1), 2.a.(2) or 2.a.(4) of this Treasury Order is, in the judgment of the TIGTA, unreasonably refused or not provided, the TIGTA shall report the circumstances to the Secretary or Deputy Secretary without delay.

b. Employees of the OTIGTA shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the TIGTA determines such disclosure is unavoidable during the course of an investigation.

c. Employees of the OTIGTA shall safeguard information in accordance with 26 U.S.C. § 6103(p)(4) and other applicable laws.

7. Conforming Amendments

a. Any authority or responsibility currently delegated to the Inspector General of the Department of the Treasury in Treasury Order 101-19, dated October 24, 1994; Treasury Order 101-21, dated July 7, 1997; Treasury Order 102-13, dated January 19, 1993; Treasury Order 102-19, dated March 19, 1998; Treasury Order 105-13, dated

February 19, 1997; Treasury Order 107-05, dated March 2, 1995; and Treasury Order 150-29, dated November 23, 1982, is also delegated to the TIGTA until the listed Treasury Order is canceled or a successor Treasury Order is issued.

b. The TIGTA is designated a "Head of Bureau" and is authorized, with respect to the operations of the TIGTA, to exercise the functions delegated from the Secretary to the "Head of Bureau" in Treasury Order 101-06, dated July 7, 1980; Treasury Order 101-12, dated December 19, 1955; and Treasury Order 101-14, dated October 24, 1960, until the listed Treasury Order is canceled or a successor Treasury Order is issued.

c. The TIGTA may issue additional directives, delegations or regulations regarding the operations of the OTIGTA as the TIGTA deems appropriate.

8. Sunset Review

This Order shall be reviewed five years from the date of issuance unless superseded or canceled prior to that date.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 99-1668 Filed 1-25-99; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 27-14]

Organization and Functions of the Office of Treasury Inspector General for Tax Administration

January 15, 1999.

1. *Purpose.* This directive describes the organization and functions of the Office of Treasury Inspector General for Tax Administration (OTIGTA).

2. *The Treasury Inspector General for Tax Administration.* The Treasury Inspector General for Tax Administration (TIGTA) is appointed by the President, by and with the advice and consent of the Senate, and reports to the Secretary of the Treasury and the Deputy Secretary. The Office of the Treasury Inspector General for Tax Administration (OTIGTA) is organizationally placed within the Departmental Offices, but is independent of the Departmental Offices and all other offices and bureaus within the Department.

a. Pursuant to the Inspector General Act of 1978, as amended, the TIGTA carries out a comprehensive audit and investigative program to assess the operations and programs of the Internal Revenue Service (IRS), the IRS Oversight Board, and the Office of Chief

Counsel of the IRS. (Hereafter, the IRS Oversight Board and the Office of the Chief Counsel of the IRS are referred to as the "Related Entities").

b. The TIGTA carries out the duties and responsibilities described in Treasury Order 115-01 "Office of the Inspector General for Tax Administration" or successor documents.

c. The TIGTA provides executive leadership to the OTIGTA and exercises supervision over the personnel and functions of its major components. The TIGTA determines the budget needs of the OTIGTA, sets organizational policies and priorities, oversees organizational operations and provides reports to the Secretary and members of Congress.

d. The TIGTA is a member of the President's Council on Integrity and Efficiency (PCI&E).

e. Under the supervision of the TIGTA are a Deputy Inspector General for Tax Administration; a Counsel to the Treasury Inspector General for Tax Administration; an Assistant Inspector General for Audit; an Assistant Inspector General for Investigations; four Regional Inspectors General for Tax Administration; the Director, Office of Resources, Management and Support; the Director, Office of Systems Development and Integration; the Director, Central Case Development Center; the National Director for Communication, Education and Quality; and such support staff as the TIGTA deems necessary. (See Attachment I for chart of OTIGTA organization.)

3. *The Deputy Inspector General for Tax Administration.* The Deputy Inspector General for Tax Administration serves as the TIGTA's principal assistant and is designated as the first assistant to the TIGTA for the purposes of 5 U.S.C. 3345.

a. The Deputy Inspector General for Tax Administration directs and oversees the national proactive and coordinated activities of auditors and investigators to detect and deter fraud and abuse involving the IRS or the Related Entities;

b. The Deputy Inspector General for Tax Administration manages the strategic management process of the OTIGTA, which consists of formulating the TIGTA's Strategic Plan and Annual Business Plan; evaluating the programs and operations of the Assistant Inspectors General and Regional Inspectors General; and preparing the semiannual report for the Secretary and Congress.

c. The Deputy Inspector General for Tax Administration coordinates legislative activities for the OTIGTA.

d. The Deputy Inspector General for Tax Administration supervises the following officials:

(1) The Director, Office of Management, Resources and Support, who advises and assists the TIGTA on administrative, financial, personnel, and management matters; develops, directs and oversees OTIGTA administrative policy, planning and resource activities nationally; and furnishes administrative services for OTIGTA headquarters operations.

(2) The Director, Office of Systems Development and Integration, who is responsible for developing the OTIGTA's information system architecture and budget requirements; establishing information technology policies and procedures; acquiring, developing, and maintaining computer hardware, data telecommunications, and software applications; and providing information technology services in support of audits, investigations and administrative activities at OTIGTA locations nationwide.

(3) The Director, Central Case Development Center, who is responsible for detecting unauthorized access to taxpayer records by employees of the IRS and Related Entities, and detecting fraud and abuse by employees through analysis of audit trails and other records maintained on IRS computer systems.

(4) The National Director of Communications, Education, and Quality, who originates, plans, implements and directs the OTIGTA's system management program, leadership and management education programs, and internal and external communications programs.

4. *The Counsel to the Treasury Inspector General for Tax Administration.* The Counsel to the Treasury Inspector General for Tax Administration performs the following functions.

a. Provides legal advice to the various components of the OTIGTA on issues that arise in the exercise of their audit and investigative responsibilities. Such issues include the scope and exercise of the TIGTA's authorities and responsibilities; audit and investigative techniques and procedures; the impact of proposed and existing legislation and regulations on IRS and OTIGTA programs and operations; and legal issues that arise in the conduct and resolution of audits and investigations.

b. Provides legal advice on OTIGTA internal administration and operations, including appropriations, ethics, personnel matters, and the disclosure of tax and other information.

c. Conducts and supervises the litigation on personnel and Equal Employment Opportunity matters involving OTIGTA employees and, as applicable, coordinates with the Department of Justice and others on these matters.

d. Reviews and coordinates with the Department of Justice the enforcement of subpoenas issued by the OTIGTA, and representation of OTIGTA in litigation.

5. *The Assistant Inspector General for Audit.* The Assistant Inspector General for Audit (AIGA) performs the following functions.

a. Plans and oversees an audit program that provides for independent reviews and appraisals of the operations of the IRS and Related Entities. These reviews provide information on the condition of all functional activities of the IRS and Related Entities, and are sufficient in scope to provide a basis for constructive management action by responsible officials.

b. Provides overall leadership and direction for evaluating the vulnerability of IRS and Related Entities operating activities to problems, and recommends action to pursue in planning audit coverage that provides for:

(1) Systematic verifications and analyses of financial transactions;

(2) Assessments of the design and development of new and existing information systems;

(3) Appraisals of the effectiveness and efficiency of IRS and Related Entities programs and operations; and

(4) Execution of the responsibilities mandated under the Chief Financial Officers Act relating to audits of IRS financial statements.

c. Plans and executes continuous quality assurance of audit activities by conducting visitations to independently assess the execution of regional and headquarters audit operations and their adherence to the GAO's Government Auditing Standards; identifying operational concerns in audit activities and preparing reports that recommend appropriate management actions; monitoring and evaluating regional audit activities using qualitative and quantitative methods of analysis; and recommending new procedures and techniques for improving the overall quality of audit operations.

d. Formulates and maintains audit policies, procedures, and program guidelines; develops and maintains the audit management information system; and produces management information reports for use by OTIGTA managers.

e. Develops and maintains the professional skills of audit personnel by

providing professional training course development, design and instruction. The AIGA determines, in conjunction with the National Director for Communications, Education and Quality, training priorities and goals of the audit training programs, identifies training needs, and defines and articulates training objectives.

f. Supervises the Deputy Assistant Inspector General for Audit; the Directors of the Office of Strategic Planning; the Director, Office of Policy and Management; and the Director, Office of Audit Projects.

6. *Assistant Inspector General for Investigations.* The Assistant Inspector General for Investigations (AIGI) performs the following functions.

a. Plans and oversees a program to investigate activities related to fraud, waste, abuse, and mismanagement concerning the activities and operations of IRS and Related Entities. This includes investigating allegations against employees, applicants, grantees, and contractors (including those performing tax administration functions for the IRS) of criminal acts and other misconduct such as bribery; embezzlement; abuse of authority; unauthorized disclosure or use of tax information; false claims; conflict of interest; violations of the Federal ethics standards; and abuse of taxpayer rights.

b. Protects the IRS and Related Entities against external attempts to corrupt or threaten their employees such as attempts by non-IRS employees and tax practitioners to unlawfully interfere with the programs and operations of the IRS through bribery, impersonation, intimidation, harassment, threats, assaults or other unlawful actions that may impact IRS personnel and impede Federal tax administration.

c. Formulates investigative policies and procedures; performs quality assurance and oversight reviews to assure that the investigative program is in compliance with guidelines and investigative standards; prepares reports on investigative trends; and processes requests for release of information in compliance with the Freedom of Information Act, the Privacy Act and

Internal Revenue Code disclosure provisions.

d. Provides support nationwide in the forensic examination of documentary evidence; furnishes expertise in the use of technical and electronic investigative equipment; assists in the enhancement of video and audio evidentiary material; provides expertise and assistance during the search and seizure of computers and computer data; performs tests of the security of IRS and Related Entities information systems; and, in conjunction with the National Director for Communications, Education and Quality, assesses investigative training needs and sets training objectives.

e. Operates a nationwide complaint center, including a hotline, to receive and process allegations of fraud, waste or abuse; supervises investigations of allegations against the IRS Executive Resources Board, members of the IRS Oversight Board, and officials who are appointed by the TIGTA; administers the Potentially Dangerous Taxpayer System; and gathers information regarding individuals or groups who advocate violence against the IRS.

f. Supervises the Deputy Assistant Inspector General for Investigations; the Director, Office of Investigations; the Director, Office of Policy and Oversight; the Director, Office of Training and Investigative Support; and an Executive Assistant.

7. *The Regional Inspectors General for Tax Administration.* The Regional Inspectors General for Tax Administration perform the following functions:

a. Provide executive level direction over regional audit and investigative staffs;

b. Supervise the regional information technology and administrative staffs; and

c. Direct local proactive activities of auditors and investigators to detect and deter fraud and abuse involving IRS personnel and activities.

d. There are four Regional Inspectors General for Tax Administration. The regional offices are located in the metropolitan areas of New York, NY; Atlanta, GA; Dallas, TX; and San Francisco, CA. These regional offices

have the same geographical boundaries as the four IRS regions; OTIGTA personnel who are assigned to a Regional Inspectors General for Tax Administration are located at various locations within the region. (See Attachment II for chart of the OTIGTA field structure.)

(1) *The Regional Inspector General for Audit* is responsible for the execution of the audit program throughout the region. The audit program, which includes verification of financial transactions and analyses of IRS operating programs, policy and procedures, serves as the basis for informing appropriate officials of the manner in which operations are being carried out and responsibilities are being discharged, and recommending necessary changes in policies, practices and procedures.

(2) *The Regional Inspector General for Investigations* is responsible for the execution of the investigative program throughout the region. This program investigates allegations of fraud, abuse or misconduct by employees of the IRS and the Related Entities, and actions by individuals who attempt to threaten or corrupt these employees or impede tax administration. The investigative results are given to the Department of Justice, IRS management, or other authorities for appropriate criminal and administrative action.

8. *Authority.* Treasury Order 115-01, "Office of the Inspector General for Tax Administration".

9. *Expiration Date.* This Directive will expire three years from the date of issuance unless superseded or canceled prior to that date.

10. *Office of Primary Interest.* Office of Treasury Inspector General for Tax Administration.

Lawrence W. Rogers,

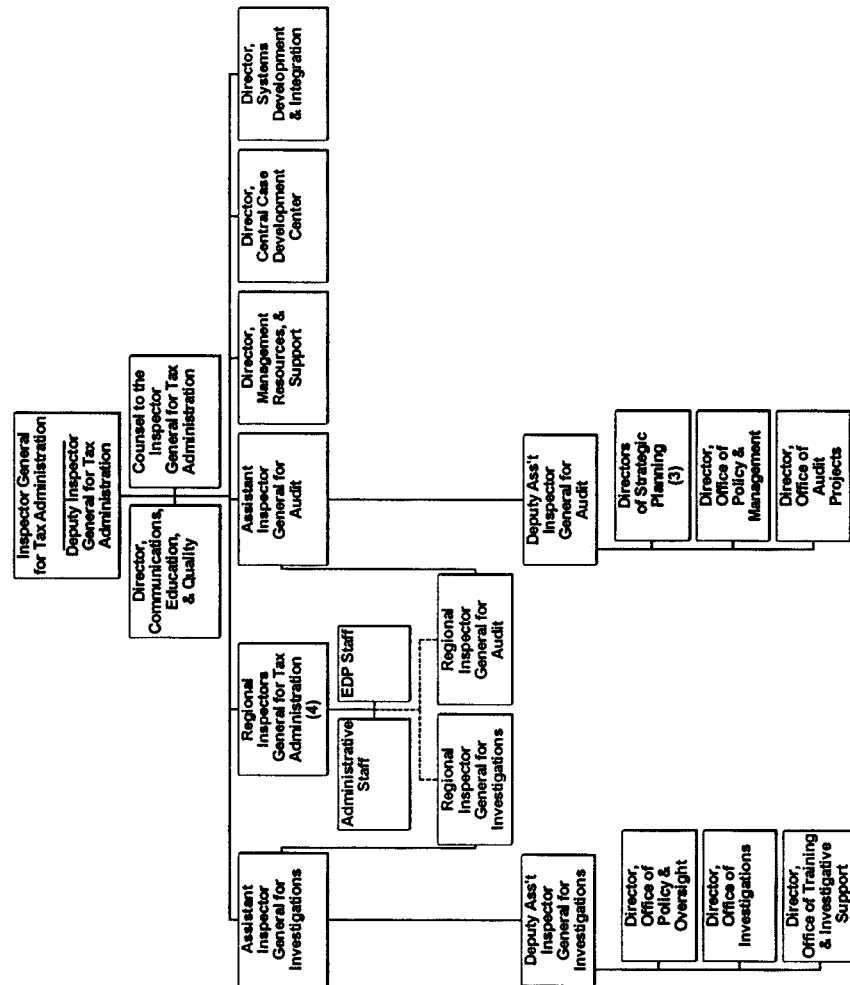
Acting Treasury Inspector General for Tax Administration.

Attachments:

1. OTIGTA Organization Chart
2. Map—OTIGTA National and Regional Office

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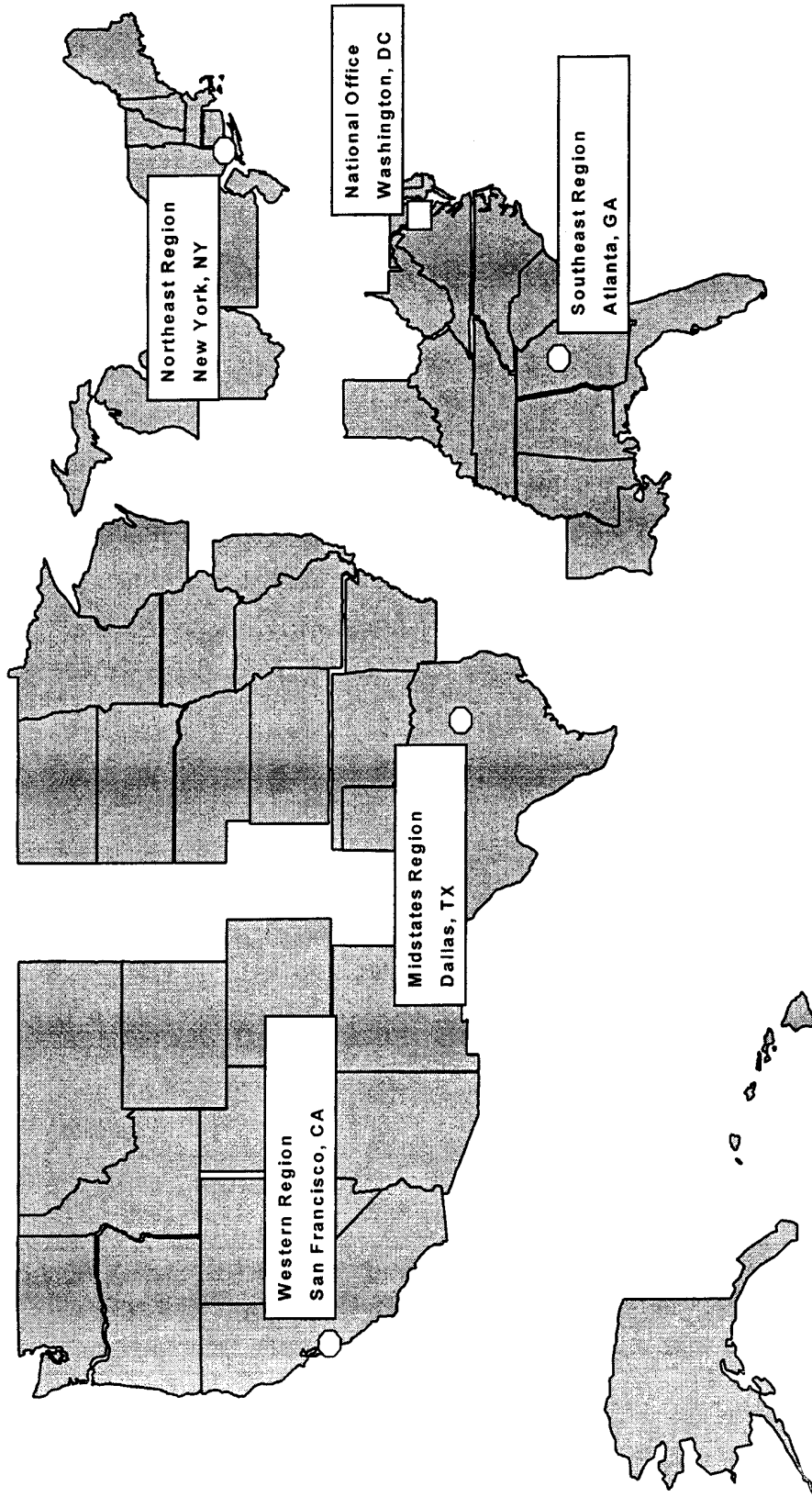
Treasury Inspector General for Tax Administration



Treasury Directive 27-12, dated 01-18-99

Attachment II

Treasury Inspector General for Tax Administration
Map - National and Field Office Locations



Federal Register

Tuesday
January 26, 1999

Part II

Department of Labor

Employment and Training Administration

**Welfare-to-Work Competitive Grants;
Notice**

DEPARTMENT OF LABOR**Employment and Training
Administration****Welfare-to-Work Competitive Grants**

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Notice of availability of funds; solicitation for grant applications.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces the third round of competitive grants under the Welfare-to-Work (WtW) grant program. The WtW program assists States and local communities to provide the transitional employment assistance needed to move hard-to-employ recipients of Temporary Assistance for Needy Families (TANF), and certain noncustodial parents, who have experienced or have characteristics associated with long-term welfare dependence, into lasting unsubsidized jobs. This announcement describes the conditions under which applications will be received under the (WtW) Competitive Grants program and how DOL/ETA will determine which applications it will fund. Please note that substantive changes have been made to this solicitation from previous WtW competitive grant solicitations. Read this Announcement carefully. In this round, the Department of Labor is placing a high priority on funding applications targeted to specific populations who face particular challenges in moving from welfare to work: noncustodial parents, individuals with disabilities, individuals who require substance abuse treatment, victims of domestic violence and individuals with limited English proficiency. Applications targeting these high priority populations may be eligible for bonus points. Applications for other WtW projects will also be considered, but will not be eligible for the bonus points associated with serving a high priority population. This announcement includes all of the information and forms needed to apply for WtW competitive grants.

DATES: The closing date for receipt of applications under this announcement is April 30, 1999. For the funding cycle covered by this announcement, complete applications must be received at the address below no later than 2 p.m. EST (Eastern Standard Time). Except as provided below, grant applications received after this date and time will not be considered. Applications which are not accepted for this announcement

must be resubmitted to be considered for future announcements.

ADDRESSES: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ms. Mamie D. Williams, SGA/DFA 99-003, 200 Constitution Avenue, NW, Room S4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Questions should be faxed to Ms. Mamie D. Williams, Grant Management Specialist, Division of Federal Assistance, Fax: (202) 219-8739. This is not a toll-free number. Questions may also be sent via electronic mail to "disgu-sga@doleta.gov." All inquiries sent via fax or e-mail should include the SGA number (DFA 99-003) and a contact name and phone number. This announcement is also being published on the Internet on the Employment and Training Administration's Welfare-to-Work Home Page at <http://wtw.doleta.gov>. Commonly asked questions and answers with regard to the WtW competitive grants and the WtW program in general, and copies of the Interim Final Rule governing the Welfare-to-Work program, including activities conducted under the competitive grants, are also available on the WtW Home Page. Award notifications will be also published on the WtW Home Page.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 403(a)(5)(B) of Title IV of the Social Security Act. Regulations governing the WtW program are at 20 CFR Part 645, published at 62 FR 61588 (November 18, 1997).

II. Submission of Applications

Four copies of the application must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. All applications must be single-spaced, and on single-sided, numbered pages. A font size of at least 12 point is required.

Section I of the application must include the following required elements: (1) Application Cover Sheet; (2) Project Financial Plan, including the SF-424, (3) ETA Form 9070, Project Synopsis Form, and (4) Evidence of State and local consultation. Section I will not count against the application page limits. Failure to include all elements required in this section will result in disqualification of the application. Applications will not be reviewed if appropriate State and PIC/political subdivision certifications (or evidence of efforts to consult, as described in Section IV below) are not

included. No additional information or materials will be accepted by the Department of Labor after the closing date, unless such additional material is specifically requested by the Grant Officer.

Section II of the application, the project narrative, shall not exceed twenty (20) pages for the Government Requirements/Statement of Work section, as described below in the "Required Content for WtW Competitive Grant Applications—Fiscal Year 1999," plus an additional ten (10) pages for Attachments, to include no information that is critical to the review of the proposal. Letters of support for a proposal should NOT be submitted and will count against the page limits.

Acceptable Methods of Submission

Applications may be hand-delivered or mailed. Hand-delivered applications must be received at the address identified above by the date and time specified. Overnight mail deliveries will be treated as hand-deliveries. Mailed applications that arrive after the closing date will be accepted if they are post-marked at least five (5) days prior to the closing date. Applications submitted via overnight mail that arrive after the closing date will be accepted if they are post-marked at least two (2) days prior to the closing date. Otherwise, late applications will not be accepted. Telegraphed and/or faxed applications will not be accepted.

Applications may be withdrawn by written notice or telegram (including mailgram), or in person if the representative's identity is made known, and the representative signs a receipt for the application.

OMB Approval of Paperwork Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1205-0399, expiration 7/99. The time required to complete this information collection is estimated to average twenty (20) hours per response, including the time to review the instructions, search existing data resources, gather data needed, and complete and review the information. Comments concerning this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Job Training Programs, Room N4459, Washington, DC 20210 (Paperwork Reduction Project 1205-0399).

Comments may be reflected in the development of future solicitations.

Catalog of Federal Domestic Assistance Number

The Welfare-to-Work program is listed in the Catalog of Federal Domestic Assistance at No. 17.253, "Employment and Training Assistance—Welfare-to-Work Grants to States & Local Entities for Hard-to-Employ Welfare Recipient Programs."

III. Program Scope and Funding

Competitive grant projects will be expected to achieve the purpose of all WtW grants:

To provide transitional assistance which moves welfare recipients into unsubsidized employment providing good career potential for achieving economic self-sufficiency.

This transitional assistance is to be provided through a "work first" service strategy in which recipients are engaged in employment-based activities. Grant funds may be used to provide needed basic and/or vocational skills training as a post-employment service in conjunction with either subsidized or unsubsidized employment. This flexibility, established in the Regulations, reflects the basic "work first" philosophy of the WtW legislation, and recognizes the critical importance of continuous skills acquisition and lifelong learning to economic self-sufficiency.

All competitive grant projects are expected to be integral parts of a comprehensive strategy for moving eligible individuals into unsubsidized employment in a local, community-based context. Projects should develop and implement innovative approaches that enhance a community's ability to move eligible individuals into self-sustaining employment, create upward mobility paths and higher earnings potential for WtW participants, and achieve sustainable improvements in the community's service infrastructure for assisting welfare recipients.

All applications will be reviewed under the criteria set forth in Part VII of this announcement, including the effectiveness of the proposal in moving TANF recipients who are least job ready into unsubsidized employment, in moving such recipients into unsubsidized employment in labor markets that have a shortage of low-skill jobs, and in expanding the base of knowledge about programs aimed at moving TANF recipients into long-term unsubsidized employment.

Targeted Populations

Within the overall WtW competition, the Department seeks applications that target one of five high priority populations—(1) noncustodial parents; (2) individuals with disabilities; (3) individuals requiring substance abuse treatment; (4) victims of domestic violence or (5) individuals with limited English proficiency. Applications that identify one (and only one) of these target populations on the Project Synopsis Form (ETA Form 9070, Appendix B) will be reviewed separately by a panel of appropriate subject matter experts. Applications that target more than one of the high priority populations will be considered as general applications. It is important to note that the eligibility criteria and the proposed outcomes for projects for these targeted populations are the same as for the WtW program overall—to place hard-to-employ individuals in unsubsidized employment leading to economic self-sufficiency.

Projects serving high priority populations must respond to the same requirements as all other WtW competitive grant proposals, as described in "Required Content for WtW Competitive Grant Applications—Fiscal Year 1999" below. In addition, these applications will be required to describe: the specific services to be provided that address the unique characteristics of the targeted population; the specific partner organizations who have experience serving the targeted population or who will be key to the recruitment of the population into the project; and the prevalence of the targeted population within the eligible WtW population in the local area(s) to be served by the project.

Other Areas of Interest

In addition to proposing innovative strategies for moving welfare recipients into lasting unsubsidized employment and for providing services to the targeted populations described above, applicants are encouraged to consider the following in designing responsive service strategies for the eligible population in their local area.

- Strategies that focus on serving public and assisted housing residents;
- Development of responsive transportation and child care service systems;
- Integration of work and learning strategies to develop skills that promote employment, retention and career development;
- Creation of job opportunities (including self-employment) that allow

for flexibility to address work and family needs while providing income levels that are adequate for self-sufficiency;

- Proactive strategies to involve employers in design of service strategies and implementation of the project;
- Strategies that focus on family-based assistance and that are integrated with children systems (e.g., Child Care, Head Start) that can assist the full family unit;
- Activities to help women access nontraditional occupations; and
- Strategies that reflect effective integration with both the workforce development (e.g., One-Stop) and welfare systems.

In identifying those Other Areas of Interest addressed by the proposal on the Project Synopsis form (Required format can be found in Appendix B), please indicate the page number on which relevant text relating to this interest area can be found in the proposal narrative.

The Department is also interested in receiving applications to implement projects that are coordinated with community saturation strategies (in which comprehensive services are available to assist all of the eligible residents in a defined community). The Department expects that these applications would be submitted from communities in which there are concentrations of eligible hard-to-employ individuals, there is a reasonable opportunity to provide employment for all such individuals, and there are established partnerships which can contribute a significant level of resources to implement the strategy. A definition of "community saturation strategy" is provided in Appendix A.

Funding Availability

Approximately \$240 million is available for Federal grant assistance through this announcement. Of the funds available in this round of competitive grants, the Department aims to distribute approximately 70 percent for projects to serve cities with large concentrations of poverty and 30 percent for projects to serve rural areas. Definitions for "cities with large concentrations of poverty" and "rural area" can be found in Appendix A of this announcement. Applications to serve rural areas should be targeted to serve eligible residents from subareas that represent concentrations of poverty. Further, as indicated under the Criteria section of this solicitation, applicants are strongly encouraged to present innovative strategies to address the needs of areas with concentrations of poverty. Each application must indicate

on the required Project Synopsis Form either a rural or an urban focus for its project services.

It is expected that most grant awards will be between \$1 million and \$5 million. Furthermore, it is expected that most grants will serve a minimum of 100 eligible participants. Applications that are outside of this range must provide a brief explanation of how the project will have substantial community impact (especially for those below \$1 million and/or fewer than 100 participants), or how project services will be provided on a local level and targeted to the specific needs of the defined target group (especially for those applications over \$5 million).

Award Period

It is expected that the planned performance period for most projects will be between 18 and 30 months. Grant funds are not available for expenditure for longer than three years. No obligation or commitment of funds will be allowed beyond the grant period of performance. Any unspent grant funds must be returned to the Federal government.

IV. Eligible Grant Applicants

Private Industry Councils (PICs), political subdivisions of the State, and private entities (as defined in Appendix A) are eligible to receive grant funds under this announcement. Eligible private entities include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, public and private colleges and universities, and other qualified organizations. Private entities include both non-profit and for-profit organizations but do not include individuals.

Entities other than a PIC or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the PIC(s) or political subdivision(s) for the area in which the project is to operate. The term "in conjunction with" shall mean that the application must include a signed certification by both the applicant and either the appropriate PIC(s) or political subdivision(s) indicating that:

1. The applicant has consulted with the appropriate PIC(s)/political subdivision(s) during the development of the application; and

2. The activities proposed in the application are consistent with, and will be coordinated with, the WtW efforts of the PIC(s)/political subdivision(s).

If the applicant is unable to obtain the certification, it will be required to include information describing the

efforts which were undertaken to consult with the PIC(s)/political subdivision(s) and indicating that the PIC(s)/political subdivision(s) were provided a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Department of Labor. "Sufficient opportunity for PIC/political subdivision review and comment" shall mean at least 30 calendar days.

The certification, or evidence of efforts to consult, must be with either each PIC or each political subdivision in the service area in which the proposed project is to operate. These certifications must be included in Section I of the grant application, and will not count against the established page limitations. For the purposes of this portion of the application, applicants must demonstrate, through written documentation such as registered mail receipt, that project applications were shared with the PIC/political subdivision in a timely manner. Certifications or evidence of efforts to consult must be included with the application. The Department of Labor will not accept additional information after the closing date.

State-level Consultation

All applicants for competitive grants, including PICs and political subdivisions, must submit their applications to the Governor or, at the discretion of the Governor, to the designated State administrative entity for the WtW program, for review and comment prior to submission of the application to the Department. For private entities, State review must be subsequent to review by the PIC or political subdivision.

When submitted to the Department, the application must include any comments from the Governor or his/her designee or must include information indicating that the Governor was provided a sufficient opportunity for review and comment prior to submission to the Department. "Sufficient opportunity for State review and comment" shall mean at least 15 calendar days. For the purposes of this portion of the application, information indicating that the Governor was provided opportunity for review must be demonstrated by written documentation, such as registered mail receipt, that project applications were submitted to the Governor or his/her designee in a timely manner. Certifications or evidence of efforts to consult must be included with the application. The Department of Labor

will not accept additional information after the closing date.

Applicants for Multiple Community or National Projects

Consideration will be given to applications which propose multi-community or national strategies to move welfare recipients into long-term unsubsidized employment leading to economic self-sufficiency. For example, an applicant may design a nationwide project to create jobs for welfare recipients in a particular industry. Applications which propose multi-community or national strategies must meet all of the application requirements contained in this Announcement. Specifically, private entities proposing such projects must include the signed certification from the applicable PIC or political subdivision of each local area in which the project will operate or other evidence indicating the efforts undertaken to obtain the required consultation as described above. Such applications must also demonstrate the required consultation with the Governors of the States in which the project will operate. Applications proposing national projects must comply with all statutory and regulatory requirements and will be rated under the same evaluation criteria as other applications. Applicants should be aware that the extent of local collaboration demonstrated in a national project will be considered as an important factor in the overall strength of the proposal. Applications targeting one of the high priority populations may also propose a multi-site project.

Lobbying Disclosure Act of 1995

Entities described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 *et seq.*, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

V. Program and Administrative Requirements

Participant Eligibility and Funding Expenditures

Each project will be required to meet the targeting provisions described at 20 CFR 645.211–645.213. [Note: The WtW Regulations are available at the WtW Internet web site at <http://wtw.doleta.gov>.] These provisions dictate that a minimum of 70 percent of the funds in each WtW competitive grant must be used to serve hard-to-employ individuals as described in Sec.

645.212. Furthermore, no more than 30 percent of the funds in each grant may be used to serve individuals with characteristics predictive of long-term welfare dependence, as described in Sec. 645.213.

Allowable Uses of Funds

Competitive grant funds shall be spent only for those activities identified in the WtW Regulations, at 20 CFR Part 645.220 and set forth below; for appropriate administrative costs; and for information technology costs in accordance with 20 CFR 645.235(c)(3).

WtW Allowable Activities Are:

(a) Job readiness activities financed through job vouchers or through contracts with public or private providers.

(b) Employment activities which consist of any of the following: (1) Community service programs; (2) Work experience programs; (3) Job creation through public or private sector employment wage subsidies; and (4) On-the-job training.

(c) Job placement services financed through job vouchers or through contracts with public or private providers subject to the payment requirements at Sec. 645.230(a)(3).

(d) Post-employment services financed through job vouchers or through contracts with public or private providers, which are provided after an individual is placed in one of the employment activities listed in paragraph (b) above, or in any other subsidized or unsubsidized job. Post-employment services include, but are not limited to, such services as: (1) Basic educational skills training; (2) Occupational skills training; (3) English as a second language training; and (4) Mentoring.

(e) Job retention services and support services which are provided after an individual is placed in a job readiness activity, as specified in paragraph (a) above, in one of the employment activities, as specified in paragraph (b) above, or in any other subsidized or unsubsidized job. These services can be provided with WtW funds only if they are not otherwise available to the participant. Job retention and support services include, but are not limited to, such services as: (1) Transportation assistance; (2) Substance abuse treatment (except that WtW funds may not be used to provide medical treatment); (3) Child care assistance; (4) Emergency or short-term housing assistance; and (5) Other supportive services.

(f) Individual development accounts which are established in accordance with section 404(h) of the Act.

(g) Intake, assessment, eligibility determination, development of an individualized service strategy, and case management may be incorporated in the design of any of the allowable activities listed in paragraphs (a) through (f) above.

Administrative Costs

Allowable costs and the 15 percent limitation on administrative costs for WtW competitive grants are defined in the WtW Regulations at 20 CFR 645.235. All proposed costs must be reflected as either a direct charge to specific budget line items, or as an indirect cost. Direct and indirect administrative costs are allowable, but combined, these costs cannot exceed 15 percent of the total grant. The administrative costs negotiated in the final grant document may be below fifteen percent.

Only costs which result from applying a federally-approved indirect cost rate may be entered on the "indirect cost" line item of the budget. If an indirect cost rate is used, the applicant must include documentation from the cognizant Federal agency which includes the approved rate, the cost base against which it is applied, and the approval date.

All applicants will be expected to justify proposed costs (see Item 1B, Project Financial Plan, in the "Required Content for WtW Competitive Grants Applications—Fiscal Year 1999"). Profits are not an allowable use of grant funds.

Use of Federal Funds

Federal funds cannot be used to support activities which would be provided in the absence of those funds. Grant funds may cover only those costs which are appropriate and reasonable. Federal grant funds may only be used to acquire equipment which is necessary for the operation of the grant. The grantee must receive prior approval from the DOL/ETA Grant Officer for the purchase and/or lease of any property and/or equipment with a per unit acquisition cost of \$5,000 or more, and a useful life of more than one year as defined in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", codified at 29 CFR Part 97 (also known as the "Common Rule"), and "Grants and Agreements with Institutes of Higher Education, Hospitals and Other Non-Profit Organizations," codified at 29 CFR Part 95 (also known as OMB Circular A-110). This restriction includes the

purchase of Automated Data Processing (ADP) equipment. A request for such prior approval may be included in the grant application or submitted after the grant award. Requests submitted after the grant award must be directed through the Grant Officer Technical Representative (GOTR) and must include a detailed description and cost of the items to be acquired.

Grant funds also may not be used to cover any project-related costs incurred prior to the effective date of the grant award. In making a grant award, DOL/ETA has no obligation to provide any future additional funding in connection with the grant award.

Pursuant to 20 CFR Part 645.235(c)(3), the costs of information technology—computer hardware and software—needed for tracking or monitoring under a WtW grant are not subject to the fifteen percent limitation on administrative costs.

Year 2000 Compliance

Any information technology purchased in whole or in part with WtW funds, which is used for a period of time that goes beyond December 31, 1999, must be "year 2000 compliant." This means that such information technology shall accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, "year 2000 compliant" information technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time with it.

Assurances and Certifications

The following assurances and certifications must be included as part of each grant application: Debarment & Suspension Certification.

Other assurances and certifications will be required as part of each executed grant agreement, but do not need to be submitted as part of a WtW Competitive grant application: Assurances/Non-Construction Programs; Certification Regarding Lobbying; Drug Free Workplace Certification; Certification of Non-delinquency; and Non-discrimination and Equal Opportunity Requirements.

Departmental Oversight

The Department reserves the right to conduct oversight and both programmatic and financial monitoring activities for all competitive grants

awarded under the WtW grants program.

Department of Health and Human Services Evaluation of the Welfare-to-Work Program

Competitive grant projects will participate in the evaluation of the WtW grant program by the U.S. Department of Health and Human Services (DHHS), as described in Title IV, section 413(j)(1) of the Social Security Act. The goal of the DHHS evaluation is to expand the base of knowledge about programs aimed at moving the least job-ready welfare recipients into unsubsidized employment. The Department of Health and Human Services has selected Mathematica Policy Research as the evaluation contractor for this project. The evaluator will collect program and administrative data to determine the range of WtW project designs and the employment outcomes for all WtW grantees, consistent with section 413(j)(1)(C) of the Social Security Act. In addition, the evaluator, in cooperation with DHHS, will select certain sites at which to qualitatively study the implementation of the WtW program and other sites where net impact and cost effectiveness of the program will be examined quantitatively. For more information concerning Mathematica's evaluation of the WtW grants program, visit their website at <http://www.mathematica-mpr.com>.

VI. Monitoring and Reporting

Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees, at approximately the midpoint of the project performance period. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding recipients who are served, expenditure of grant funds on allowable activities, integration with other resources and service providers in the local area, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to other additional reviews at the discretion of the Department.

Reporting

Applicants selected as grantees will be required to provide the following reports:

1. **Financial Reporting:** The Department of Labor (DOL) issued financial reporting instructions for competitive grantees on June 24, 1998. Financial reports will be submitted electronically directly to DOL.

2. **Participant Reporting:** Participant reporting instructions will be issued shortly covering the WtW competitive grant program. Participant reports for each competitive grant will be submitted in accordance with reporting instructions at a later date.

3. **Other Reporting:** The Department of Labor may negotiate additional reporting requirements with individual grantees, where necessary, for grant management and/or knowledge development purposes, including quarterly narrative reports.

In addition to required quarterly financial and participant reporting, some grantees may be asked to provide information to the appropriate ETA Regional Office during the early implementation phase of the project for the purpose of project oversight. This information may include project enrollment levels, participant characteristics, and emerging implementation issues.

VII. Review and Selection of Applications for Grant Award Review Process

The Department will screen all applications to determine whether all required elements are present and clearly identifiable. These elements are described below in the "Required Content for WtW Competitive Grant Applications—Fiscal Year 1999." Failure to include and all required elements in Section I of the grant application will result in rejection of the application.

Each complete application will be objectively rated by a panel against the criteria described in this announcement. Applicants are advised that the panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussions occur, an award will be based on the applicant's signature on the SF424 form (See Appendix B), which constitutes a binding offer.

Those applications that target one of the high priority populations (noncustodial parents, individuals with disabilities, individuals requiring substance abuse treatment, victims of

domestic violence or individuals with limited English proficiency) will be reviewed separately from the general applications.

The Grant Officer will make final award decisions based on what is most advantageous to the Government, considering factors such as: Panel findings; the geographic distribution of the competitive applications; the extent to which the competitive applications reflect a reasonable distribution of funds across the targeted populations and other areas of interest identified in this announcement; and the availability of funds.

Criteria

The criteria, and the weights assigned to each, which will apply to the review of applications submitted in response to this announcement are:

1. "Relative Need for Assistance" [20 points] which shall consider the concentration of poverty and long-term welfare dependence and the lack of employment opportunities in the project service area (up to 9 points); the extent of gaps in the capacity of the local infrastructure to effectively address the employment barriers which characterize the targeted population, including an assessment of existing WtW competitive and formula funding in the local area (up to 6 points); and the responsiveness of the project design to the other areas of interest identified in Part III of this announcement (up to 5 points).

2. "Innovation" [20 points] which shall consider the extent to which the project incorporates new and better strategies for moving welfare recipients into lasting unsubsidized employment leading to economic self-sufficiency. These strategies can include, but are not limited to, new and better ways that services can be accessed by participants in the local community, new and better ways for local organizations to work together, or the replication of effective strategies in a new setting.

3. "Outcomes" [25 points] which shall consider the quality of the proposed employment and earnings outcomes (up to 10 points); the extent to which the proposed plan of services responds to identified needs, the barriers faced by proposed participants, and the conditions in the local area as well as the likelihood that the proposed service plan will result in the proposed outcomes (up to 12 points); and the reasonableness of the level of investment in relation to the proposed outcomes (up to 3 points).

4. "Local Collaboration and Sustainability" [25 points] which shall consider the extent to which the project is coordinated with the WtW formula

grant and TANF grant activities and supported by the PIC/political subdivision and local TANF agency (up to 8 points); the extent and quality of local community partnerships that are involved in and making substantial contributions of resources to the project (up to 7 points); involvement of and participation by local employers (up to 5 points); and the extent to which the community and/or the local area has developed plans and commitments to maintain and expand the capacity to serve the target population with local resources over a sustained period of time (up to 5 points).

5. "Demonstrated Capability" [10 points] which shall consider the extent to which the applicant and its partner organizations demonstrate a history of success in serving a comparable target group, the extent of use of current or former welfare recipients in the provision of services, and the extent to which the applicant demonstrates the ability to effectively execute grant management responsibilities.

For those proposals that are deemed by the Grant Officer to be most competitive, applicants proposing projects in which the majority of participants to be served by the project reside in designated Empowerment Zones and Enterprise Communities (EZ/EC) will be eligible for 5 bonus points. Applicants must demonstrate that the majority of participants reside within a federally-designated EZ/EC in order to be awarded the 5 bonus points, and must indicate the name of the EZ/EC to be served. The applicant does not necessarily have to be located within the EZ/EC.

In addition, for those proposals that are deemed by the Grant Officer to be most competitive, applicants targeting one of five high priority populations (noncustodial parents, individuals with disabilities, individuals requiring substance abuse treatment, victims of domestic violence or individuals with limited English proficiency) will be eligible for 10 bonus points. Applications must address the services, partner organizations and need in the local area relative to service to the targeted population.

Signed at Washington, D.C., this 22nd day of January 1999.

Janice E. Perry,
DOL Grant Officer.

Required Content for WtW Competitive Grant Applications Fiscal 1999

Each application must contain the information and follow the format outlined in this Part. The application must include: (1) Information that

responds to these requirements; (2) information that indicates adherence to the provisions described in preceding sections of this announcement; and (3) any other information the applicant believes will address the review and selection criteria.

I. Project Summary

A. Application Cover Sheet

Each application shall complete an Application Cover Sheet (as found in Appendix B) to clearly designate the applicant name, affiliation and which, if any, of the targeted populations will be served. This form will help the Department in the processing of applications and is required.

B. Project Financial Plan

Information provided in this section will be evaluated predominantly under the "Outcomes" criteria.

The financial plan shall describe all costs associated with implementing the project that are to be covered with grant funds. All costs should be necessary and reasonable according to the Federal guidelines set forth in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," codified at 29 CFR Part 97 (also known as the "Common Rule"), and "Grants and Agreements with Institutes of Higher Education, Hospitals and Other Non-Profit Organizations" (also known as OMB Circular A-110), codified at 29 CFR Part 95.

The financial plan must contain the following parts:

- "Application for Federal Assistance" and "Budget Information Sheet" by line item for all costs required to implement the project design effectively. Submission of these two completed forms is required. (See Appendix B for these required forms.)

Note: Although there is no matching requirement for these grants, the Department strongly encourages the leveraging of financial and other resources in the implementation of WtW competitive grant projects. These resources will not, however, be recorded on the Budget Information Sheet (Appendix B). Leveraged resources offered by applicants will be evaluated in the selection criteria under "Local Collaboration and Sustainability."

- Budget narrative/justification which provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes.

C. Project Synopsis Form—ETA Form 9070

Each application shall provide a project synopsis form (ETA Form 9070)

which identifies: the applicant; the type of organization; applicant contact information; the project service area; whether the service area is a city with a large concentration of poverty or a rural area; whether the project is located within an EZ/EC, and if so, which one; which, if any, of the five high priority populations will be served—noncustodial parents, individuals with disabilities, individuals requiring substance abuse treatment, victims of domestic violence or individuals with limited English proficiency [NOTE: Applications which target more than one of the targeted populations will be reviewed as general applications]; the other areas of interest identified in the announcement which are addressed by the project (with page numbers where relevant portions of the project narrative can be found); the amount of grant funds requested; the planned period of performance; the planned number of WtW-eligible TANF recipients to be served; the number of noncustodial parents to be served (if applicable); the significant employment barriers which characterize the target group; and the planned employment and earnings outcomes. The required format for this synopsis can be found in Appendix B.

In addition, each application must provide a two-page executive summary of the grant proposal, describing the significant employment barriers which characterize the target group, the proposed service strategy, other significant service organizations involved in the delivery of services, and the most innovative elements of the proposal. This section must be limited to no more than two single-spaced, single-sided pages.

D. Evidence of Required Local and State Consultation

It is the expectation of the Department that, to the extent possible, all applications will be developed in consultation with the appropriate PIC/political subdivision and the Governor. Competitive grant projects should complement the WtW formula program activity, rather than exist independent of, or in conflict with, that program.

Each application must include the signed certification of the required consultation with the Governor, or of evidence of efforts to consult, as described in this announcement. Applications from private entities must also include the signed certification from the appropriate PIC(s) or political subdivision(s) or other evidence indicating the efforts undertaken to obtain the required consultation as described in this announcement. In areas where an entity other than the PIC

has been designated by the Governor and approved by the Secretary to administer the WtW formula grant, the applicant should also include evidence of consultation and/or support from that entity. All certifications or comments provided as part of this requirement must be included in this section of the grant application and will not be counted against the established page limits.

Note: All certifications or evidence of efforts to consult must be included as part of the application. The Department of Labor will not accept any information received after the closing date.

II. Government Requirements/ Statement of Work—Project Narrative

This section of the application should not exceed 20 single-spaced, numbered pages. The application should include information of the type described below, as appropriate.

Description of Service Area

Information provided in this section will be evaluated predominantly under the "Relative Need" criteria.

- Identify the specific political and geographic jurisdictions (e.g., cities, counties, subsections of cities/counties) which are included in the service area for the project.
- Identify the percent of the population in the service area that has income below the poverty level.
- Identify the percent of the population in the service area that is receiving TANF assistance.

(Note: Child-only TANF cases should be excluded from this number unless these cases are relevant to the project target group—e.g. noncustodial parents—Please note that ETA Training and Employment Guidance Letter (TEGL) No. 6-98 entitled "Technical Amendment to Welfare-to-Work (WtW) Eligibility Criteria for Noncustodial Parents" and dated 9/21/98, provides further information on eligibility requirements of noncustodial parents).

- Identify the percent of the TANF population that has received TANF or AFDC assistance for 30 months or more, or is within 12 months of losing eligibility for assistance under State or Federal law (Note: Child-only TANF cases should be excluded from this number unless these cases are relevant to the project target group—e.g. noncustodial parents).
- Identify the most recent unemployment rate in the service area.
- Describe the significant deficiencies in the local area infrastructure that represent significant barriers to moving eligible recipients into permanent employment in an efficient

manner (e.g., lack of transportation, labor market with a shortage of low-skill jobs, shortage of employers with appropriate employment opportunities, remoteness from health facilities, limited number of social and support service agencies).

Summary of Strategy for Use of WtW Formula and Existing Competitive Grant Funds in the Local Area

Information provided in this section will be evaluated predominantly under the "Local Collaboration and Sustainability" and "Relative Need" criteria.

- Identify the substate service area covered by the WtW formula and existing competitive grants.
- Describe the allocation of formula and existing competitive grant funds among the allowable activities.
- Identify the significant local and community organizations involved and their roles in providing assistance through the formula and existing competitive grants.
- Describe how the proposed competitive grant project will supplement and enhance the capacity of the WtW formula and existing competitive grant activities to effectively serve eligible recipients in the local area who have significant employment barriers.
- In cases where the applicant cannot obtain information regarding the formula grant because the State has not submitted a complete WtW Formula Grant Plan, the application should so indicate. Absence of this information, in and of itself, will not penalize the applicant.

Analysis of Target Group

Information provided in this section will be evaluated predominantly under the "Relative Need" criteria.

- Describe the individuals targeted for assistance through this project, including any noncustodial parents (See reference above to TEGL 6-98, dated 9/21/98 concerning eligibility determination for noncustodial parents), individuals with disabilities, individuals requiring substance abuse treatment, victims of domestic violence, individuals with limited English proficiency, and public and assisted housing residents.
- Describe the significant employment barriers which characterize this target group, including the process for identifying those participants who are least job ready.

Note: An adequate analysis of employment barriers of the target group will be a critical factor in evaluating the need for grant

assistance and the appropriateness of the proposed plan of services.

Analysis of Employment Opportunities

Information provided in this section will be evaluated predominantly under the "Relative Need" criteria.

- Identify the types of occupations in the local area which are being targeted as appropriate employment opportunities for the target group of this project.
- Describe the justification for the selection of the occupations in terms of their availability and the adequacy of expected placement wage and post-placement earnings potential to achieve self-sufficiency.

Service Strategy

Information provided in this section will be evaluated predominantly under the "Innovation" and "Outcomes" criteria.

- Identify the specific job readiness, placement (in both subsidized and unsubsidized employment), post-employment, job retention and/or support services to be provided with competitive grant funds as well as services to be leveraged from other sources.
- Describe the rationale for planned enrollments in activities in terms of the employment barriers, infrastructure deficiencies and employment opportunities previously identified above.
- Describe what individual support services, such as mentoring and case management, will be used to maintain participants in the program.

Service Process

Information provided in this section will be evaluated predominantly under the "Innovation" and "Outcomes" criteria.

- Describe the comprehensive service process that will be available to participants, and identify the organizations which will be involved in providing specific services/activities. [A process flowchart and/or service matrix may be used to provide this description.] The description should specify what elements of the service strategy are already available in the community, whether through the WtW formula program, the TANF program or from other sources, as well as the elements or services that will be funded through the WtW competitive grant award.
- Describe the specific methods which will be used by the grantee and the local TANF agency to coordinate and work jointly in providing the following services: Outreach,

recruitment, and referral of appropriate recipients for assistance through the project; assessment of skills and identification of specific employment barriers; counseling and case management; and support services.

- Applicants are strongly encouraged to develop good linkages to the local TANF agency in the development of their proposal. Although not required, applicants are encouraged to consult with and, where possible, to share their proposals with the local TANF agency to incorporate that agency's perspective into their proposed service process.
- Where vouchers for services are to be used, describe the process by which vouchers will be distributed and redeemed (in compliance with 20 CFR Sec. 645.230(a)(3)), including who will be eligible, how amounts of vouchers will be determined, and how the grantee will ensure that quality services are being provided.

Integration of Resources

Information provided in this section will be evaluated predominantly under the "Local Collaboration and Sustainability" criteria.

- Identify specific financial and other resources and organizational/service provider capabilities which are being contributed to provide the full range of assistance to the identified target group for the project. At a minimum, describe the coordination and contributions of local JTPA service providers, local TANF providers, and local housing and transportation authorities. In developing their plans, applicants are encouraged to be mindful of their obligations not to interfere with collective bargaining rights or agreements or to displace employees.

[**Note:** There is no matching or cost sharing requirement for WtW competitive grants.]

- Describe the process that will be used to maintain and expand the service structure in the local area and engage new partners after receipt of WtW competitive grant funds.
- Describe how the project will develop a sustainable capacity in the local community to effectively move welfare recipients into permanent jobs and to foster the long-term self-sufficiency of the target population. It is expected that project services will provide assistance oriented towards long-term solutions. It is also expected that the need for grant funds to provide this assistance will diminish over time, specifically in the

latter stages of the grant performance period.

Employer Support

Information provided in this section will be evaluated predominantly under the "Local Collaboration and Sustainability" criteria.

- Describe the specific responsibilities and approaches for developing relationships with and support of area employers to generate a sufficient number of unsubsidized employment opportunities for the target group. Specifically describe how employers will be encouraged to customize employment opportunities to meet work-related needs (e.g., child care, flexible work schedules) of recipients.
- Identify the employers in the local area who have made commitments to the project and describe the types of commitments made (e.g., number and types of jobs, contribution of employer resources for post-hire support services and/or training).

Planned Outcomes

Information provided in this section will be evaluated predominantly under the "Outcomes" criteria.

- Identify and justify planned performance for the comprehensive service strategy on the following measures: Number of participants to be placed into unsubsidized employment; average earnings at placement in unsubsidized employment; expected average earnings one year after placement in unsubsidized employment; and cost per placement in unsubsidized employment.

The application may include other measures and planned performance levels as deemed appropriate by the applicant. If these are included, the applicant should briefly describe their relevance to the project.

Implementation Plan

Information provided in this section will be evaluated predominantly under the "Outcomes" and "Innovation" criteria.

- Identify the critical activities, time frames and responsibilities for effectively implementing the project within the first 60 days after the award of the grant.
- Include an implementation schedule showing the number of participants, enrollments in allowable activities, placements in unsubsidized employment and terminations over the life of the grant.

Project Management Plan

Information provided in this section will be evaluated predominantly under the "Demonstrated Capability" and "Innovation" criteria.

Applicants must be able to document that they have systems capable of satisfying the administrative and grant management requirements for WtW grants as defined in 20 CFR Part 645.

- Include a project organizational chart which identifies the organizations, and staff, with key management responsibilities and the specific responsibilities of each organization;
- Describe the specific experience of the applicant and other key organizations involved in the project in serving individuals with significant barriers to employment. The information should include at a minimum specific projects or grants, a comparison of the characteristics of individuals served to the target group for this project, and the employment outcomes which were achieved. In addition, applicants should provide the names and addresses of their last three grantors, public and/or private, from which applicants received funding. The Department of Labor reserves the right to contact any or all of these funding organizations or to request additional information from the applicant regarding past performance as part of a responsibility review process, or if the Department is concerned about the applicants' financial responsibility or capability to manage grant funds.
- As appropriate, describe how current or former welfare recipients will be used to provide services.
- Describe the procedures which will be used to obtain feedback from participants and other appropriate parties on the responsiveness and effectiveness of the services provided.
- Applicants are advised that the Department of Labor may use information included in proposals to document the nature of the WtW applicant pool, as well as the range and depth of perceived service needs in the WtW population.

Innovation

Information provided in this section will be evaluated predominantly under the "Innovation" criteria.

Recipients of WtW competitive grants are expected to use creativity and innovation to help eligible individuals obtain long-term unsubsidized employment and economic self-sufficiency. The application should describe how the proposed approach represents an innovative method for

achieving the employment objectives of the project. Proposed strategies should represent an improvement over, or a variation on, approaches that have traditionally been used in the project service area to assist welfare recipients and other low-income unemployed individuals.

Grant recipients are also expected to share knowledge which they develop through the use of innovative approaches. Applicants should describe how they will report lessons learned in the course of the grant implementation, and further, describe their plans for disseminating the knowledge they have gained.

Additional Requirements for Community Saturation Projects

Information provided in this section will be evaluated predominantly under the "Outcomes" and "Innovation" criteria.

- Describe why a project employing a saturation strategy is appropriate for the project service area and target group.
- Describe the feasibility of a saturation strategy for the project service area and target group (e.g., based on available employment opportunities).
- Identify the local partners who will be involved in implementing the saturation strategy, the services to be provided and the dollar value of the contribution from each.

Additional Requirements for Projects Targeting High Priority Populations

Information provided in this section will be evaluated predominantly under the "Relative Need" and "Local Collaboration and Sustainability" criteria.

For those projects targeting services to noncustodial parents, individuals with disabilities, individuals requiring substance abuse treatment, victims of domestic violence or individuals with limited English proficiency:

- Describe the specific services to be provided that address the unique characteristics of the targeted population;
- Describe the specific partner organizations who have experience serving the targeted population or who will be key to the recruitment of the population into the project; and
- Describe the prevalence of the targeted population within the eligible WtW population in the local area(s) to be served by the project.

Appendix A: Definitions of Key Terms

City with Large Concentration of Poverty—Any county that contains an urban center of more than 50,000 people with a poverty rate of greater than 7.5 percent.

Community Saturation Strategy—Projects that propose to serve 100 percent of the WtW eligible population within a designated service area, i.e., the community is completely "saturated" with services.

Private Entity—Any organization, public or private, which is neither a PIC nor a political subdivision of a State.

Private Industry Council (PIC)—from Sec. 645.120 of the WtW Regulations—A Private Industry Council established under Section 102 of the Job Training Partnership Act, which performs the functions authorized at Section 103 of the JTPA.

Political Subdivision—A unit of general purpose local government, as provided for in State laws and/or Constitution, which has the power to levy taxes and spend funds and which also has general corporate and police powers.

Rural Area—(1) Any county that does not contain an urban center of more than 50,000 people, and where at least 50 percent of the geographical area of the county has a population density of less than 100 persons per square mile; or (2) in counties where there is an urban center, a rural area within the county that constitutes, or is part of, a distinct rural labor market.

Individual with a disability—A person with a physical or mental impairment as defined in Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Appendix B: Required Forms

- (1) Application Cover Sheet
- (2) Application for Federal Assistance (Standard Form 424)

Note: In completing the Standard Form 424, the applicant should indicate in Item 11 of the form whether the project is to operate in a city with a large concentration of poverty or in a rural area; identify the EC/EZ included in the project service area, if applicable; and identify any of the areas of interest identified in the announcement which are addressed by the project.

- (3) Budget Information Sheet
- (4) Project Synopsis Form

BILLING CODE 4510-30-P

Cover Sheet

Applicant #: _____
(Leave Blank)Solicitation for Grant Application
(SGA# 99-003)Welfare-to-Work Competitive Grant
(Round #3)_____
(Enter Legal Name of Applying Organization)We are applying for grant funding under the following Category
(ONLY CHECK ONE)

- _____ DISABILITIES (*only*)
- _____ DOMESTIC VIOLENCE (*only*)
- _____ LIMITED ENGLISH PROFICIENCY (*only*)
- _____ NONCUSTODIAL PARENTS (*only*)
- _____ SUBSTANCE ABUSE (*only*)
- _____ GENERAL (*any combination of the above or another area*)

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: ☐ Application ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION	
Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): -	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award D. Decrease Duration B. Decrease Award Other (specify): _____ C. Increase Duration	9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: - TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):	

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 70%; text-align: right;">.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> </table>	a. Federal	\$	.00	b. Applicant	\$	.00	c. State	\$	.00	d. Local	\$	.00	e. Other	\$	.00	f. Program Income	\$	.00	g. TOTAL	\$	.00	16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
a. Federal	\$	.00																				
b. Applicant	\$	.00																				
c. State	\$	.00																				
d. Local	\$	.00																				
e. Other	\$	.00																				
f. Program Income	\$	.00																				
g. TOTAL	\$	.00																				
17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No																						

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.		
a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

 Standard Form 424 (REV 4-88)
 Prescribed by OMB Circular A-102

Authorized for Local Reproduction

WELFARE-TO-WORK COMPETITIVE GRANTS**PART II - BUDGET INFORMATION****SECTION A - Budget Summary by Categories**

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Participant Wages			
11. TOTAL Funds Requested (Lines 8 through 10)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

WELFARE-TO-WORK COMPETITIVE GRANTS**INSTRUCTIONS FOR PART II - BUDGET INFORMATION****SECTION A - Budget Summary by Categories**

1. **Personnel:** Show salaries to be paid for project personnel.
2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.
3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of \$5,000 or more.
5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.
6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. **Total, Direct Costs:** Add lines 1 through 7.
9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. **Participant Wages:** Include any wages paid to participants or employers for work experience, OJT, job creation, community service work or any other subsidized employment activity.
11. **Total Federal funds Requested:** Show total of lines 8 through 10.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

PROJECT SYNOPSIS FORM

U.S. DEPARTMENT OF LABOR
Employment and Training Administration

OMB No. 1205-0399

Expires: 07/31/99

Project Applicant Name: _____

Type of Organization:

☐ PIC☐ Political Subdivision (City/County)☐ Private Entity

In conjunction with (identify specific PIC or Political Subdivision): _____

Applicant Contact:

Title: _____

Address: _____

Telephone: () _____

E-mail address: _____

Fax: () _____

Project Service Area (Counties or area to be served): _____

City _____

Rural Area _____

Identify EZ/EC: _____

EZ/EC _____

WTW TARGETED POPULATIONS (Choose only one)☐ Noncustodial Parents☐ Substance Abuser☐ Limited English Proficiency☐ Disabilities☐ Domestic Violence☐ General Application**DESCRIPTION OF OTHER AREAS OF INTEREST**

(Indicate relevant page numbers in project narrative on the line provided for all areas that apply)

Key Service Strategies☐ Expanded/accessible Transportation Services☐ Expanded/accessible Child Care Services☐ Serving Public & Assisted Housing Residents☐ Integrated Work and Learning Skills Development☐ Family-focused Assistance☐ Job Creation/Self-Employment☐ Non-traditional Occupations for Women**Integration Strategies**☐ Proactive Employer Involvement☐ Integration with Child and other Family Assistance Services☐ Integration with Workforce Development and Welfare Systems☐ Community Saturation**OUTCOME MEASURES**

Funds Requested: \$ _____

Period of Performance: From _____

To _____

Number of Participants: _____

Number of Noncustodial Parents: _____

Number of Placements (unsubsidized): _____

Cost Per Placement (unsubsidized): \$ _____

Expected Average Wage at Placement: \$ _____

Expected Average Wage One Year After

Placement: \$ _____

Persons are not required to respond to this collection of information unless it displays a current valid OMB control number. Respondents obligation to reply to these reporting requirements are required to obtain or retain benefits (20 CFR 645). Public reporting burden for this collection of information is estimated to average 20 hours 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, including suggestions for reducing this burden, to the US Department of Labor, Office of Welfare-to-Work, Room C-4524, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0387).

January 1999

ETA Form 9070

**Registered
Trademark**

Tuesday
January 26, 1999

Part III

**Department of
Education**

**Fund for the Improvement of
Postsecondary Education—Learning
Anytime Anywhere Partnerships (LAAP)
(Preapplications and Applications); Notice
Inviting Applications for New Awards for
Fiscal Year (FY) 1999; Notice**

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.339A; 84.339B]

Fund for the Improvement of Postsecondary Education—Learning Anytime Anywhere Partnerships (LAAP) (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: To provide grants or enter into contracts or cooperative agreements to enhance the delivery, quality, and accountability of postsecondary education and career-oriented lifelong learning through technology and related innovations.

For fiscal year (FY) 1999, the Secretary encourages applicants to design projects that focus on the invitational priorities summarized in the invitational priorities section of this application notice.

Eligible Applicants: Partnerships consisting of two or more independent agencies, organizations, or institutions, including institutions of higher education, community organizations, and other public and private institutions, agencies, and organizations.

Note: A nonprofit organization must serve as the fiscal agent for a funded partnership.

Applications Available: January 26, 1999.

Deadline for Transmittal of Preapplications: April 2, 1999.

Deadline for Transmittal of Applications: June 18, 1999.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: August 17, 1999.

Available Funds: \$10,000,000.

Note: Federal funds available under this competition provide not more than 50 percent of the cost of a project. The non-Federal share of project costs may be in cash or in kind, fairly evaluated, including services, supplies, or equipment.

Estimated Range of Awards: \$100,000 to \$500,000 per year.

Estimated Average Size of Awards: \$333,333 per year.

Estimated Number of Awards: 25–30.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Authorized Activities

Funds awarded to an eligible partnership must be used to conduct one or more of the following activities:

(a) Develop and assess model distance learning programs or innovative educational software.

(b) Develop methodologies for the identification and measurement of skill competencies.

(c) Develop and assess innovative student support services.

(d) Support other activities consistent with the statutory purpose of this program.

Invitational Priorities

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1—Projects to address the need to ensure that significant development costs can be justified by wide-scale applicability and long-term sustainability of technology-mediated distance education, and the need to find new ways to overcome the barriers that may inhibit faculty across institutions from working collectively.

Invitational Priority 2—Projects to address the proper balance of interactivity, flexibility, and cost in order to ensure that educational opportunities are as convenient as possible but still instructionally effective and affordable.

Invitational Priority 3—Projects to develop high quality, interactive courseware that can be implemented to achieve the scale necessary to recoup large investments, but is modular and sufficiently flexible for faculty to shape and modify academic content.

Invitational Priority 4—Projects to package courses and programs to assist students who wish to draw from the offerings of multiple providers and to assist institutions to cooperate and share resources.

Invitational Priority 5—Projects to use skill competencies and learning outcomes in order to measure student progress and achievement in technology-mediated distance learning programs.

Invitational Priority 6—Projects to improve quality and accountability of technology-mediated distance education to ensure that credentials are meaningful, that educational providers are accountable, and that courses meet high standards.

Invitational Priority 7—Projects to create new technology-mediated

education opportunities for underserved learners, especially those who have not always been well served by traditional campus-based education or common forms of distance education, including: individuals with disabilities; individuals who have lost their jobs; individuals making the transition from welfare to the workforce; and individuals seeking basic or technical skills or their first postsecondary education experience.

Invitational Priority 8—Projects to improve support services for students seeking technology-mediated distance education to ensure that they have complete and convenient access to needed services such as registration, financial aid, advising, assessment, counseling, libraries, and many others.

Selection Criteria

The Secretary selects from the criteria in 34 CFR 75.210 to evaluate preapplications and applications for this competition. Under 34 CFR 75.201, the Secretary announces in the application package the selection criteria and factors, if any, for this competition and the maximum weight assigned to each criterion.

FOR FURTHER INFORMATION OR

APPLICATIONS: The Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 400 Maryland Avenue, SW, Room 3100, ROB-3, Washington, DC 20202-5175. Telephone: (202) 358-3041 to order applications; or (202) 708-5750, between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday, for information. Individuals may also request applications by submitting the name of the competition, their name, and postal mailing address to the e-mail address LAAP@ED.GOV. Individuals may obtain the application text from Internet address <http://www.ed.gov/offices/OPE/FIPSE/>. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070f *et seq.*
Dated: January 20, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99-1720 Filed 1-25-99; 8:45 am]

BILLING CODE 4000-01-P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 26, 1999**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Prunes (dried) produced in California; published 1-25-99

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New alternatives policy program; unacceptable refrigerants; listing; published 1-26-99

New alternatives policy program; unacceptable refrigerants; listing; published 1-26-99

Air quality implementation plans; approval and promulgation; various States:

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Hazardous waste:

Identification and listing—
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TRANSPORTATION DEPARTMENT**Coast Guard**

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TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:

McDonnell Douglas; published 12-22-98

TREASURY DEPARTMENT Internal Revenue Service

Procedure and administration:

Unified partnership audit; modifications and additions; published 1-26-99

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Federal Seed Act:

Noxious-weed seeds; prohibition of shipment of agricultural and vegetable seeds containing them; comments due by 2-4-99; published 12-24-98

Organization, functions, and authority delegations:

Transfer of regulations under Egg Products Inspection Act to FSIS; comments due by 2-1-99; published 12-31-98

Transfer of regulations under Egg Products Inspection Act to FSIS; correction; comments due by 2-1-99; published 1-21-99

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

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Update; comments due by 2-2-99; published 12-4-98

AGRICULTURE DEPARTMENT**Food Safety and Inspection Service**

Organization, functions, and authority delegations:

Agency responsibilities, organization, terminology and transfer of regulations under Egg Products Inspection Act from AMS; comments due by 2-1-99; published 12-31-98

Transfer of regulations under Egg Products Inspection Act from AMS; correction; comments due by 2-1-99; published 1-21-99

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

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Alaska fisheries of Exclusive Economic Zone—

Crab and scallop fisheries; maximum sustainable and optimum yield; comments due by 2-1-99; published 12-1-98

Northeastern United States fisheries—

Atlantic sea scallop; comments due by 2-1-99; published 12-1-98

Northeast multispecies; comments due by 2-1-99; published 1-6-99

Northeast multispecies and monkfish; comments due by 2-1-99; published 12-2-98

Northeast multispecies, Atlantic sea scallop,

and Atlantic salmon; comments due by 2-1-99; published 12-7-98

West Coast States and Western Pacific fisheries—

Pacific groundfish; comments due by 2-1-99; published 12-1-98

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Clothes washers, energy conservation standards; comments due by 2-3-99; published 11-19-98

Clothes washers, energy conservation standards; correction; comments due by 2-3-99; published 1-8-99

Energy conservation:

Distribution transformers; test procedures; comments due by 2-5-99; published 11-12-98

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Hazardous waste:

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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Human drugs and biological products: Postmarketing adverse drug reactions; electronic reporting; comments due by 2-3-99; published 11-5-98

Human drugs: Abbreviated new drug applications; approval effective date; comments due by 2-3-99; published 11-5-98
Bioavailability and bioequivalence requirements; abbreviated applications; comments due by 2-2-99; published 11-19-98

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INTERIOR DEPARTMENT National Park Service

National Park System: Glacier Bay National Park, AK; commercial fishing activities; comments due by 2-1-99; published 1-11-99

INTERIOR DEPARTMENT Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions: Kentucky; comments due by 2-5-99; published 1-6-99

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LABOR DEPARTMENT Employment and Training Administration

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