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

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 736 and 744

[Docket No. 001128335–0335–01]

RIN 0694–AC38

General Order Concerning Shaykh Hamad bin Ali bin Jaber Al-Thani, Gulf Falcon Group, Ltd., and Related Entities

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is issuing General Order No. 3 which imposes a license requirement for exports and reexports of all items subject to the Export Administration Regulations (EAR) that are on the Commerce Control List destined to or for Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates. This order also prohibits the use of License Exceptions for exports and reexports of all items subject to the EAR that are listed on the Commerce Control List to these entities. This rule amends the EAR to implement General Order No. 3.

EFFECTIVE DATE: This rule is effective December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 2000, Shaykh Hamad bin Ali bin Jaber Al-Thani delivered to Baghdad, Iraq, a Boeing 747 aircraft to Iraqi President Saddam Hussein as a gift. This action violated the United Nations Security Council resolution restricting trade with Iraq. To guard against further such diversions to Iraq, the Department of Commerce is issuing General Order No. 3 imposing a license requirement for exports and reexports of all items subject to the EAR that are listed on the Commerce Control List destined to or for Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates. This order also prohibits the use of License Exceptions (see part 740 of the EAR) for exports and reexports of items subject to the EAR that are listed on the Commerce Control List to such entities. This rule amends the EAR to implement General Order No. 3.

To assist readers in finding in the EAR these additional end-users subject to special restrictions with respect to exports and reexports, this rule also adds a new section 744.15 to part 744, ''Control Policy: End-User and End-Use Based,'' which provides a cross reference to the prohibitions contained in the general orders in Supplement No. 1 to part 736.

Saving Clause

Shipments of items subject to the requirements of General Order No. 3 that are removed from License Exception or NLR eligibility as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard carrier to a port of export or reexport pursuant to actual orders for export on December 7, 2000 may be exported or reexported under the previous License Exception or NLR provisions up to and including December 14, 2000. Any such items not actually exported or reexported before midnight December 14, 2000, require a license in accordance with General Order No. 3.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 736

Exports, Foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 736 and 744 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 736—[AMENDED]

1. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

2. Supplement No. 1 to Part 736 is amended by adding and reserving General Order No. 2 and adding General Order No. 3 to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

General Order No. 2 [Reserved]

General Order No. 3 of December 7, 2000; Imposition of license requirements and prohibition on use of any License Exceptions for exports and reexports of items subject to the EAR that are listed on the Commerce Control List to Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates.

(a) *License requirements.* Effective December 7, 2000, a license is required for all items subject to the EAR that are listed on the Commerce Control List destined to or for: Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates.

(b) *License Exceptions.* No License Exceptions are available for exports or reexports to the entities described in paragraph (a) of this General Order.

(c) *Licensing policy.* Items will be reviewed on a case-by-case basis to determine whether there is a risk of diversion contrary to United Nations sanctions or U.S. law.

PART 744—[AMENDED]

3. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 9, 2000 (65 FR 68063, November 13, 2000); Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

4. Part 744 is amended by adding section 744.15 to read as follows:

§ 744.15 Restrictions on exports and reexports to persons named in General Orders.

Supplement No. 1 to part 736 of the EAR names certain persons (individuals and other legal entities) subject to special restrictions with respect to exports and reexports subject to the EAR. You may not violate any order issued under or made a part of the EAR, per General Prohibition nine of part 736 of the EAR.

Dated: November 27, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–31101 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–43651; File No. S7–12–98]

RIN 3235–AH41

Regulation of Alternative Trading Systems; Extension of Temporary Stay of Effectiveness

AGENCY: Securities and Exchange Commission.

ACTION: Extension of temporary stay of effectiveness.

SUMMARY: The Securities and Exchange Commission extends the stay of effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) until December 1, 2001. These provisions relate to alternative trading systems that trade certain categories of debt securities. This stay is necessary to provide sufficient time for a reporting system to be developed that would compile and publish data for investment grade and non-investment grade corporate debt instruments. The other alternative trading system rules, which were published in 63 FR 70844 on December 22, 1998, remain effective as previously stated.

DATES: 17 CFR 242.301(b)(5)(i)(D) and (E) and 242.301(b)(6)(i)(D) and (E) are stayed until December 1, 2001.

FOR FURTHER INFORMATION CONTACT: John Polise, Senior Special Counsel, at (202) 942–0068, Gordon Fuller, Special Counsel, at (202) 942–0792, or Steven Johnston, Special Counsel at (202) 942–0795, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 1998, the Securities and Exchange Commission (''Commission'') adopted new rules and rule amendments to allow alternative trading systems to choose whether to register as national securities exchanges, or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume.[1] The effective date for most of these new rules and rule amendments was April 21, 1999. The Commission stated in the adopting release that Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) would become effective on April 1, 2000. Specifically, for alternative trading systems trading 20 percent or more of the average daily trading volume in either investment grade or non-investment grade corporate debt securities over at least four of the preceding six months, the fair access and systems capacity, security, and integrity requirements were to take effect on April 1, 2000. On March 31, 2000, the Commission issued a temporary stay of effectiveness for Rules 301(b)(5)(i)(D) and (E) until December 1, 2000.[2]

II. Extension of Temporary Stay of Effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E)

In the Adopting Release and the Stay of Effectiveness Release, we noted that volume data for investment grade and non-investment grade corporate debt was not yet being compiled or published. Accordingly, market

[1] Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (December 22, 1998) (''Adopting Release'').

[2] Securities Exchange Act Release No. 42603A (March 31, 2000), 65 FR 18888 (April 10, 2000) (''Stay of Effectiveness Release'').

participants and regulators had no mechanism to determine the aggregate daily trading volume for either investment grade corporate bonds or non-investment grade corporate bonds for purposes of complying with or enforcing the rules. While efforts are ongoing to complete such a system, no comprehensive reporting system is currently in place. The Commission believes that extending the stay of effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) until December 1, 2001 should provide sufficient time for a system to be developed and implemented that would compile and publish data for both market segments.[3]

By the Commission.

Dated: December 1, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31136 Filed 12–06–00; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

RIN 1076–AD95

Financial Assistance and Social Services Programs; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations which were published Friday, October 20, 2000 (65 FR 63144). The regulations amended the existing regulations to incorporate new service delivery systems within the Financial Assistance and Social Service program.

EFFECTIVE DATE: December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Blair, (202) 208–2479.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections supersede regulations, 25 CFR part 20, last published in 1985. These regulations conform to changes in public assistance payments procedures as well as expand service delivery systems to conform to existing conditions.

[3] The Commission, however, believes that good business practice dictates that alternative trading systems adopt the standards of systems capacity, security, and integrity, regardless of their trading volume.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on October 20, 2000, of the final regulations which were the subject of FR Doc. 00–26703, is corrected as follows:

§ 20.100 [Corrected]

1. On page 63160, in the second column, in § 20.100, in the second definition the term ''adult assistance care'' is corrected to read ''adult care assistance''.

§ 20.206 [Corrected]

2. On page 63163, in the first column, in § 20.206, the second sentence of the introductory text is corrected by removing the word ''or.''

§ 20.334 [Corrected]

3. On page 63166, in the third column, in § 20.334(b), the first sentence is corrected by removing the words ''social services worker'' and adding the words ''Bureau Line Officer.''

§ 20.335 [Corrected]

4. On page 63166, in the third column, § 220.335 is correctly designated as § 20.335.

§ 20.403 [Corrected]

5. On page 63167, in the second column, in § 20.403, paragraph (a)(4)(ii), is corrected by removing the reference to ''(d)(1)'' and adding in its place the reference ''(b)(1).''

§ 20.603 [Corrected]

6. On page 63170, in the second column, in § 20.603(a), the first sentence is corrected to add after the word ''requested'' the words ''and all recipients will be redetermined for eligibility every 6 months.''

7. On page 63170, in the second column, in § 20.603(c), the first sentence is corrected by removing the word ''Superintendent'' and adding the words ''social services worker'' in its place.

8. On page 63170, in the second column, in § 20.603(d) introductory text, correct the word ''Superintendent'' to read ''social services worker.''

9. On page 63170, in the second column, in § 20.603(d)(2), correct the word ''Superintendent'' to read ''social services worker.''

§ 20.701 [Corrected]

10. On page 63171, in the first column, in § 20.701, the section heading is corrected by removing the words, ''an applicant or'' and adding the word ''a'' in its place.

Dated: November 30, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31093 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–052G]

RIN 1218–AB90

Occupational Exposure to Cotton Dust

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

ACTION: Direct final rule; request for comments.

SUMMARY: OSHA is issuing a direct final rule amending its occupational health standard for Cotton Dust, which was issued in 1978 and amended in 1985, to add cotton washed in a batch kier system to the types of washed cotton partially exempt from the cotton dust standard. This direct final rule follows the recommendation of the Task Force for Byssinosis Prevention, formerly known as the Industry/Government/Union Task Force for Washed Cotton Evaluation, which studies the health effects associated with the processing and use of washed cotton. This direct final rule is also consistent with a finding of OSHA's review of the cotton dust standard conducted pursuant to Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866. See also the companion documents published in the Proposed Rules and Notices sections of today's **Federal Register**.

DATES: This direct final rule will be effective April 6, 2001 unless significant adverse comments are received by February 5, 2001.

OSHA will publish a document in the **Federal Register** at least 30 days before the effective date of the direct final rule. The document will either confirm the effective date of the final rule or, if significant adverse comments are received, will withdraw the final rule.

ADDRESSES: Comments should be sent in quadruplicate to Docket No. H–052G, Docket Office, Room N2625; Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., NW.,

Washington DC 20210, (202–693–2350). Alternatively, one paper copy and one disc (3½ inch floppy in WordPerfect 6.0, 8.0 or ASCII) may be sent to the Docket Office mailing address; or one copy faxed to 202–693–1648 and 3 paper copies mailed to the Docket Office mailing address, or one copy E-mailed to *ecomments.osha.gov* and one paper copy mailed to the Docket mailing address.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Bayard, Director of the Office of Risk Assessment, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2275.

SUPPLEMENTARY INFORMATION:

Introduction

This direct final rule adds one additional method of washing cotton to the methods the rule already permits employers to use to achieve partial exemption from the cotton dust standard (see paragraph (n), 29 CFR 1910.1043). The additional method of washing cotton addressed by this notice is called batch kier washing, and a partial exemption from the standard for cotton washed using this method is supported by extensive scientific research, which has been published by the National Institute for Occupational Safety and Health in ''Current Intelligent Bulletin 56—WASHED COTTON. A Review and Recommendations Regarding Batch Kier Washed Cotton'' (Ex. 3–3Q, Docket H–052F).

The change to the cotton dust standard achieved by this direct final rule find is supported by the relevant government agencies, industry groups, and the union representing textile workers. OSHA also considered this issue when it conducted its recent Regulatory Flexibility Act review (a section 610 ''lookback'' review) of the cotton dust standard which involved the publication of a **Federal Register** notice, the receipt of comments from interested parties, and the holding of public meetings. OSHA is aware of no opposition to the change that would be made by this direct final rule.

Therefore, OSHA considers this issue one that is appropriately addressed through the direct final rule process. However, if OSHA receives significant adverse comments on this direct final rule, it will withdraw the rule. OSHA would then proceed with the proposal on this matter published in the Proposed Rules section of today's **Federal Register**. Pursuant to that document, the Agency will consider all comments and evidence and determine whether to issue a subsequent final rule on this matter.

Background

In 1971, the Occupational Safety and Health Administration (OSHA) adopted a 1-mg/m3 (total dust) permissible exposure limit (PEL) for cotton dust. Subsequent OSHA rulemaking led to the promulgation of a comprehensive Federal occupational health standard for cotton dust in 1978 at 29 CFR 1910.1043 (43 FR 27351, June 23, 1978). In the 1978 standard, OSHA established different 8-hr time-weighted average (TWA) PELs for gravimetrically measured airborne cotton dust for different work areas of textile mills and included monitoring, medical, recordkeeping and other requirements.

Based on ''the effectiveness of the washing process in significantly reducing or eliminating the biological effects of cotton dust,'' a provision of the 1978 standard exempted from the standard cotton ''thoroughly washed in hot water'' and ''known in the cotton textile trade as purified or dyed'' cotton (43 FR 27351, June 23, 1978).

However, not all washing methods are effective in significantly reducing the biological effects of raw cotton, and some washing methods leave the cotton unworkable for spinning or weaving. In 1980, the tripartite ''Industry/Government/Union Task Force for Washed Cotton Evaluation,'' currently known as the ''Task Force for Byssinosis Prevention,'' was organized to study the issue of washed cotton and byssinosis and to find methods of washing that reduce cotton's biological effects yet leave the cotton workable. The Task Force includes representatives from the National Institute for Occupational Safety and Health (NIOSH), the Agriculture Research Service (U.S. Department of Agriculture), Cotton Incorporated, the Cotton Foundation (National Cotton Council), the American Textile Manufacturers Institute, the Union of Needletrades, Industrial and Textile Employees (UNITE) (the successor union to the Amalgamated Clothing and Textile Workers Union (ACTWU)), and OSHA.

In 1985, on the basis of a review of the existing data, comments, and Task Force recommendations, OSHA substantially revised the washed cotton provision (1910.1043(n)) in the cotton dust standard (50 FR 51120, Dec. 13, 1985). The revised standard provides a complete exemption only for ''medical grade (USP) cotton, that has been scoured, bleached and dyed, and mercerized yarn'' (Paragraph (n)(3)). In addition, the 1985 standard provides partial exemptions for cotton washed in a continuous system, but provides no exemptions for batch kier washed cotton.

Exemption from all requirements of the standard except for medical surveillance, medical recordkeeping and certain appendices is provided for higher grade cotton (low middling light spotted, or better, *i.e.,* color grade code 52 or better and leaf grade code 5 or better according to the current classification system (USDA 1993a)) that is washed: (1) On a continuous batt system or rayon rinse system, (2) with water, (3) at a temperature of no less than 60°C, (4) with a water-to-fiber ratio of no less than 40:1, and (5) with bacterial levels in the wash water controlled to limit bacterial contamination of cotton (paragraph (n)(4) of the standard).

Lower grade cotton (i.e., below color grade code 52 or below leaf grade code 5 by the current classification system) that is washed as specified in the preceding paragraph for higher grade washed cotton and that is also bleached is exempted from all requirements of the standard except for medical surveillance, recordkeeping, exposure monitoring and compliance with a 500 µg/m3 PEL for airborne dust measured by the vertical elutriator sampler, and certain appendices (paragraph (n)(5)). With respect to washed cotton of mixed grades, the 1985 revised standard specifies that the requirements for the grade with the most stringent requirements would apply (paragraph (n)(6)).

Early batch kier washing trials were performed on systems involving hand loading of cotton fiber without prior mechanical opening or prewetting. Use of this approach resulted in the incomplete wetting of cotton fibers during the washing process, which probably explains the higher dust levels and the human reactivity observed in these early studies of batch kier washing.

In 1988, Task Force investigators visited two companies utilizing batch kier processes with automated systems for mechanically opening and thoroughly wetting cotton fiber during the kier-loading process (Perkins & Berni, 1991, Ex.3–30). To evaluate the effectiveness of batch kier washing using this state-of-the-art opening and wetting technology, arrangements were made to wash cotton on one of these commercial systems for comparison with the same cotton washed using the continuous process partially exempted by the revised 1985 standard. Washings in the batch kier system were done

under two different sets of conditions: (1) at 60 °C with a 50:1 water-to-fiber ratio, and (2) at 93 °C with a 17:1 water-to-fiber ratio. The study used cotton of grade code 52 to serve as a worst case test.

The study demonstrated that washing in the batch kier system under the conditions described above resulted in a substantial and statistically significant reduction (a reduction of at least 50%) of card-generated airborne cotton dust under both conditions. In addition, the three different wash treatments (two types of batch kier and continuous batt) were highly effective and statistically equivalent in reducing the endotoxin content of card-generated airborne elutriated dust. As a result, the concentration of airborne endotoxin was very effectively reduced by all three washing methods, from more than 300 ng/m3 for the unwashed cotton (at a dust level of 1.98 mg/m3) to less than 10 ng/m3 for each of the washed cottons (at dust levels ranging from 0.35 mg/m3 to 0.89 mg/m3).

These low airborne endotoxin levels generated during card processing of the washed cottons were all below a relative ''threshold'' for acute airway response in humans described previously by NIOSH investigators in this same setting (Castellan et al. 1987, Ex. 3–5). Most investigators believe that keeping endotoxin levels low is crucial to avoiding byssinosis.

To further assess the effectiveness of washing cotton in modern batch kier systems, another blend of predominantly color grade code 52 and leaf grade code 5 cotton (grown in Texas) was washed on a batch kier system operated by another company (Jacobs et al. 1993, Ex. 3–19; Perkins and Olenchock 1995, Ex. 3–31). Washing, done at 60 °C and using a 40:1 water-to-fiber ratio, as stipulated in the revised 1985 standard for continuous wash systems, and at 93 °C and a 17:1 water-to-fiber ratio, resulted in a reduction of at least 50% in dust-generating capacity (compared with that of the unwashed cotton) under identical carding rates and ventilation conditions.

On the basis of human ventilatory responses to experimental exposures to dust from this washed cotton, Jacobs and colleagues concluded that these results ''suggest that modern batch kier systems can effectively remove the acute pulmonary toxicity of cottons washed at 60 °C and a 40:1 water-to-fiber ratio'' (Jacobs et al. 1993, Ex. 3–19, p. 276).

A substantial body of experimental evidence now exists on this issue. The evidence indicates that, with respect to the removal of potential respiratory toxicity, cotton washed in batch kier systems (using modern equipment that assures thorough wetting of the cotton fiber and no reuse of wash or rinse water) is equivalent to cotton washed on a continuous batt system, which was approved by OSHA for partial exemption under the washed cotton provisions (paragraph (n)) of the current cotton dust standard.

During OSHA's review of the Cotton Dust standard pursuant to Section 610 of the Regulatory Flexibility Act and E.O. 12866, OSHA requested comment on the washed cotton issue (63 FR 34140, June 23, 1998). OSHA received written comment from interested parties on the standard generally and on this issue, and held two public meetings in connection with the review. Based on the evidence discussed above, both the industry/government/union ''Task Force for Byssinosis Prevention'' Ex. (3–5F) and NIOSH (Ex. 3–3) submitted comments recommending that cotton washed in a batch kier system be treated by the standard in the same way as cotton mildly washed in a continuous system. The National Cotton Council of America urged OSHA in written comments and at a public meeting to amend the standard to partially exempt cotton washed in a batch kier system (Ex. 3–5). These comments and the Task Force report (Ex. 3–5Q) are located in OSHA's Docket Office, Docket No. H–052–F.

OSHA has now completed its lookback review of the cotton dust standard pursuant to the RFA and E.O. 12866. The Notices section of today's **Federal Register** announces the availability of the final report of that review, ''Regulatory Review of OSHA's Cotton Dust Standard.'' That review concludes that the Agency is justified in extending the washed cotton partial exemption in the cotton dust standard to include cotton mildly washed in a batch kier system (Ex., p. 58).

The studies demonstrate that raw cotton washed in the batch kier process according to the specified protocol results in the elimination or a substantial reduction in the significant risk of byssinosis, if employers using such washed cotton comply with the medical surveillance and certain recordkeeping requirements of the standard, and with Appendices B, C, and D of the standard. The batch kier process is as effective in this regard as other washing methods that OSHA has already partially exempted from the cotton dust standard. This conclusion is supported by NIOSH, and by the joint government, union, and industry Task Force for Byssinosis Prevention.

Accordingly, OSHA is amending the cotton dust standard to add washing in a modern batch kier system as an acceptable method of washing cotton under paragraph (n)(4) of the 1985 cotton dust standard, which will qualify cotton washed in this system for partial exemption from that standard. This amendment is being issued as a direct final rule because doing so is widely endorsed, well supported, and non-controversial.

In order to accomplish this change, OSHA is amending paragraph (n)(4) of 29 CFR 1910.1043 to include the new partial exemption for batch kier washed cotton. The standard will continue to partially exempt cotton washed through the continuous batt or rayon rinse systems. OSHA is also reorganizing paragraph (n)(4) to improve clarity.

By this action OSHA is responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that Agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protections for workers. Reliance on the direct final rule approach is also an example of OSHA's Reinvention Initiative which emphasizes flexible and efficient methods of achieving results.

Economic and Technical Feasibility

OSHA concludes that adding the batch kier washed cotton method to the list of methods already partially exempted by paragraph (n)(4) of the cotton dust standard (29 CFR 1910.1043) is both economically and technically feasible. The addition creates no new requirements and imposes no new compliance obligations on employers. Instead, it merely permits an additional type of washing to qualify for partial exemption from the cotton dust standard based on evidence that batch kier washing is as effective as other partially exempted washing methods in protecting employee health. No one is required to use the new method. Employers may choose to use the newly approved method, but they are not required to use it if they do not believe it is more advantageous than existing practices. Thus, this regulatory action reduces the burden on employers wishing to avail themselves of it, but continues to provide protections for employees. Accordingly, no further analysis of the feasibility of this direct final rule is required by the OSH Act.

Regulatory Flexibility Act: Certification of No Significant Impact

In accordance with the Regulatory Flexibility Act, as amended (5 U.S.C.

601–612), OSHA has evaluated the effects of the batch kier washing amendment on small entities. No small business is required to adopt this washing method or to purchase cotton washed by this method and all employers may continue to use their existing practices to comply with the cotton dust standard. A small business may choose to adopt this method of washing cotton or to purchase cotton washed by this method if it finds that a cost saving or other advantage is created by doing so. Based on this finding, OSHA certifies that this amendment to paragraph (n)(4) of 29 CFR 1910.1043 will not have a significant impact on a substantial number of small entities.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or land 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.

For the reasons just discussed, this direct final rule causes none of these impacts. Some cotton mills may choose to use cotton washed by this newly permitted method to save control costs otherwise required by the cotton dust standard. Consequently, this direct final rule is not a significant regulatory action and therefore does not require an Economic Analysis under Executive Order 12866.

Unfunded Mandates

This direct final rule, which amends a paragraph of the Cotton Dust standard, has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (U.S.C. 1501 et seq.). For the purposes of the UMRA, the Agency certifies that the final standard does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

Federalism

This amendment has been reviewed under Executive Order 13132 (Aug. 11, 1999) on Federalism. That order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with States prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSHA Act) expresses Congress' intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. When such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions.

This amendment to paragraph (n)(4) of the cotton dust standard was developed based on scientific research and merely grants an extra option and increased flexibility to cotton processors and textile mills. In connection with the Regulatory Flexibility Act review, OSHA held a public meeting in Atlanta, GA which is in the region where most textile industry facilities are located. State Plan states are free to adopt this amendment or an alternative that is at least as effective in protecting worker health.

State Plan Standards

The 25 States with their own OSHA approved occupational safety and health plans must adopt an equivalent amendment or one that is at least as protective to employees within six months of the publication date of this final standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming.

Paperwork Reduction Act

The information requirements contained in the cotton dust standard have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–30). The approval is in effect until January 31, 2002 pursuant to OMB Control No. 1218–0061 (29 CFR 1910.8). The approval covers the paperwork required to achieve a washed cotton partial exemption from the standard. This amendment adds no additional information collection requirements and instead merely adds an alternative method for achieving the washed cotton exemption. Consequently, the Paperwork Reduction Act of 1995 does not require OSHA to take any further action on this matter at this time.

Public Participation

Interested persons are requested to submit written data, views and arguments concerning this direct final rule. These comments must be received by February 5, 2001 and submitted in quadruplicate to Docket No. H–052G, Docket Office; Room N2625; Occupational Safety and Health Administration; U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210.

Alternatively, one paper copy and one disc (3½ inch floppy in Wordperfect 6.0, 8.0 or ASCII) may be sent to that address, or one copy faxed to (202) 693–1648 and 3 paper copies mailed to the Docket Office mailing address; or one copy E-mailed to *ecomments.osha.gov* and one paper copy mailed to the Docket Office mailing address.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

OSHA requests comments on all issues related to granting cotton washed in the batch kier system with a partial exemption from OSHA's cotton dust standard and on the Agency's findings that there are no negative economic, environmental or other regulatory impacts of this action on the regulated community. OSHA is not requesting

comment on any issues or opening the record for any issue other than those related to this amendment to paragraph (n)(4) of 29 CFR 1910.1043.

If OSHA receives no significant adverse comment on this amendment, OSHA will publish a **Federal Register** document confirming the effective date of this direct final rule. Such confirmation may include minor stylistic or technical changes to the amendment that appear to be clearly justified. For the purposes of legal review, OSHA views the date of confirmation of the effective date of this amendment as the date of issuance.

If OSHA receives significant adverse comments on this amendment, it will withdraw the amendment and proceed with the proposed rule addressing the batch kier washing issue published in the Proposed Rules section of today's **Federal Register**.

List of Subjects in 29 CFR Part 1910

Cotton dust, Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC. 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Section 4 of the Administrative Procedure Act (5 U.S.C. 553), Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000) and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of December, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended as set forth below:

PART 1910—(AMENDED)

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

Authority: Sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111) or 3–2000 (65 FR 50017) as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, and Table Z–1, Z–2, and Z–3 and 1910.1043 (n) also issued under 5 U.S.C. 553.

Section 1910.1000, and Tables Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1018, 1910.1029 and 1910.1200 are also issued under 29 U.S.C. 653.

2. Paragraph (n)(4) of § 1910.1043 is revised to read as follows:

§ 1910.1043 Cotton dust.

* * * * *

(n) * * *

(4) *Higher grade washed cotton.* The handling or processing of cotton classed as ''low middling light spotted or better'' (color grade 52 or better and leaf grade code 5 or better according to the 1993 USDA classification system) shall be exempt from all provisions of the standard except the requirements of paragraphs (h) medical surveillance, (k)(2) through (4) recordkeeping—medical records, and Appendices B, C, and D of this section, if they have been washed on one of the following systems:

(i) On a continuous batt system or a rayon rinse system including the following conditions:

(A) With water;

(B) At a temperature of no less than 60 °C;

(C) With a water-to-fiber ratio of no less than 40:1; and

(D) With the bacterial levels in the wash water controlled to limit bacterial contamination of the cotton.

(ii) On a batch kier washing system including the following conditions:

(A) With water;

(B) With cotton fiber mechanically opened and thoroughly prewetted before forming the cake;

(C) For low-temperature processing, at a temperature of no less than 60 °C with a water-to-fiber ratio of no less than 40:1; or, for high-temperature processing, at a temperature of no less than 93 °C with a water-to-fiber ratio of no less than 15:1;

(D) With a minimum of one wash cycle followed by two rinse cycles for each batch, using fresh water in each cycle, and

(E) With bacterial levels in the wash water controlled to limit bacterial contamination of the cotton.

* * * * *

[FR Doc. 00–31186 Filed 12–6–00; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 022–0239; FRL–6875–8]

Final Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution 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 March 9, 2000. This limited approval and limited disapproval action will incorporate Rules 10–15, 15.1, 16, 23–24, 26, 26.1–26.10, 29 and 30 of Ventura County Air Pollution District (District) into the federally approved State Implementation Plan (SIP).

The intended effect of finalizing this limited approval is to strengthen the federally approved SIP by incorporating these rules and by satisfying Federal requirements for an approvable nonattainment area new source review (NSR) SIP for the District. While strengthening the SIP, however, this SIP revision contains deficiencies which the District must address before EPA can grant full approval under section 110(k)(3). Thus, EPA is finalizing simultaneous limited approval and limited disapproval as a revision to the California SIP under provisions of the Act regarding EPA action on SIP submittals, and general rulemaking authority.

In addition to the above action, we are removing District Rules 18, 21, and 25 from the SIP, and deleting the conditions identified by us in 1981 for the District's 1981 NSR rule.

DATE: This action is effective on January 8, 2001.

ADDRESSES: Copies of the state submittal and other supporting information used in developing the final action are available for public inspection (Docket Number CA 022–0239) at EPA's Region IX office during normal business hours and at the following locations:

• Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California 93003.

• California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh, Permits Office, (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1261.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

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I. What Action Is EPA Finalizing?

EPA is finalizing limited approval and limited disapproval of Rules 1–15, 15.1, 16, 23–24, 26, 26.1–26.10, 29 and 30. These rules are being approved into the California SIP. EPA is also removing Rules 18, 21, and 25 from the California SIP.

TABLE 1.—RULES SUBJECT TO TODAY'S FINAL ACTION

Rule No.	Existing sip title	SIP approval date	Current rule title	Adoption date
10	Permits Required	6/18/82	Permits Required	6/13/95
11	Application Contents	6/18/82	Definitions for Regulation II	6/13/95
12	Statement by Engineer or Application Preparer	2/3/89	Application for Permits	6/13/95
13	Statement by Applicant	6/18/82	Action on Applications for an Authority to Construct.	6/13/95
14	Trial Test Runs	9/22/72	Action on Application for a Permit to Operate	6/13/95
15	Permit Issuance	4/17/87	Standards for Permit Issuance	6/13/95
15.1	none		Sampling and Testing Facilities	10/12/93
16	Permit Contents	6/18/82	BACT Certification	6/13/95
18	Permit to Operate-Application Required for Existing Equipment.	9/22/72	none—Deleted	6/13/95
21	Expiration of Applications and Permits	6/18/82	none—Deleted	6/13/95
23	Exemptions from Permits	6/18/82	Exemptions from Permit	7/9/96
24	Source Recordkeeping & Reporting	6/18/82	Source Recordkeeping & Reporting	9/15/92
25	Action on Applications	6/18/82	none—Deleted	6/13/95
26	New Source Review	7/1/82	New Source Review	10/22/91
26.1	All New & Modified Stationary Sources	7/1/82	New Source Review (NSR) Definitions	1/13/98
26.2	All New & Modified Stationary Sources-Attainment Pollutants.	7/1/82	Requirements	1/13/98
26.3	All New & Modified Stationary Sources Non-Attainment Pollutants.	7/1/82	Exemptions	1/13/98
26.4	None		Emission Banking	1/13/98
26.5	Power Plants	7/1/82	Community Bank	1/13/98
26.6	Air Quality Impact Analysis & Modification	7/1/82	Calculations	1/13/98
26.7	none		NSR-Notification	12/22/92
26.8	none		NSR-Permit to Operate	10/22/91
26.9	none		Power Plants	10/22/91
26.10	none		Prevention of Significant Deterioration (PSD)	1/13/98
29	Conditions on Permit	6/18/82	Conditions on Permits	10/22/91
30	Permit Renewal	5/3/84	Permit Renewal	5/30/89

II. Background

On March 9, 2000, in 65 FR 12495, EPA proposed limited approval and limited disapproval for the above listed District rules. In addition EPA proposed to delete four obsolete rules from the SIP and a 1981 condition that no longer applies. We also solicited comments on the District's public notification requirements for its permitting actions. Please note that in EPA's March 9, 2000 proposal, there was a typographic error in Table 1 where the rule number for Rule 26.10 (Prevention of Significant Deterioration) was erroneously shown as Rule 26.1.

In our proposal for limited approval and limited disapproval, we identified the following deficiencies in this set of permitting and NSR rules:

1. Rule 10 does not require an authority to construct (ATC) for emission units relocating within five miles within the District.

2. Rule 26 does not specify that emissions offsets must be surplus at the time of use.

3. Rule 26 provides authority to the District to deny a permit for violating National Ambient Air Quality Standards (NAAQS) but it does not provide for denial of a permit for sources that may violate PSD increments.

4. Rule 26 relies entirely on California Environmental Quality Act (CEQA) for implementing alternatives analysis required by the CAA.

III. Public Comments and EPA Response

A 30-day public comment period was provided on EPA's proposed rulemaking at 65 FR 12495. EPA only received two comments, both from the District. The District commented on one of the rule deficiency issues, and on public notification requirements. EPA's response follows a brief summary of the District comments.

Comment #1: The District disagreed with EPA's interpretation that CAA Section 173(c) requires Ventura County emission reduction credits (''ERCs'') to

be ''surplus at the time of use''. (see Rule Deficiency #2 above). The District contends:

• An emission reduction that generates an ERC is surplus because the District's attainment plan does not rely on that emission reduction to show attainment. All emission reductions submitted for ERCs are reduced to the amount to that the attainment plan identifies for the emission control that produced the emission reduction. Any amended attainment plan does not rely on reduction of banked ERCs.

• An emission reduction that generates an ERC is creditable because it is not ''otherwise required by this Act''. Ventura County's ERCs are binding through local requirements established for the purpose of creating ERC. This local authority is separate from any requirements of CAA. Furthermore, the emission reduction that generated the ERC is not relied on for attainment.

Response #1: We understand that the District has not relied on the banked emission reductions in developing its attainment or Air Quality Management Plan (AQMP) and on that basis considers all banked ERCs to be surplus to the requirements of the CAA. However, the CAA requirement for ERCs to be surplus from other requirements of the CAA is independent from the District's obligation to meet the National Ambient Air Quality Standards (NAAQS). See Section 173 (c)(2) of the CAA. 42 U.S.C. § 7503(c)(2). EPA has interpreted this provision to require emissions reductions used as offsets to satisfy Section 173(c)(2), to be surplus to all other requirements of the CAA at the time the offset is used. See ''Response to Request for Guidance on Use of Pre–1990 ERC's and Adjusting for RACT at Time of Use'' from Seitz to Howekamp, (August 26, 1994) at page 2, Note 1. We do not agree that any ERC banked in the District is automatically and always surplus because it is not relied upon for attainment. An ERC may be surplus at the time of generation but it not necessarily surplus at the time of use (or disbursement) because, for example, a Reasonably Available Control Technology (RACT) requirement that did not apply at the time the ERC was generated by a source category, becomes statutorily applicable before or at the time the ERC is used. In such a case, Sections 172(c) and 173(c)(2) of the CAA require discounting the ERC to RACT levels prior to use.

We recognize that at the time of issuance (or banking), the District discounts ERCs under its Rule 26.4.C. However, this discounting procedure does not ensure that these ERCs are surplus to all requirements of the Act as set forth in Section 172(c), 42 U.S.C. § 7502 (c), at the time of use. For example some VOC compounds are also hazardous air pollutants (HAPs). In these situations, at the time of use of an ERC for VOC, there may be a requirement for the HAP reduction pursuant to a MACT standard. Since a portion of the VOC is a HAP, and the reduction is required by a MACT standard under the CAA, the portion of the ERC associated with the HAP is not surplus simply because the District has not relied upon the reductions for Reasonable Further Progress (RFP), Rate of Progress (ROP) or the attainment demonstration. See August 26, 1994, Seitz Memo at page 3, Note 5. In sum, ERCs are not automatically surplus. Therefore it is important to ensure that ERCs are surplus to all requirements of the Act at the time they are used, even though they were discounted at the time of generation and even though the District has not relied on the ERCs for its attainment demonstration.

Comment #2: In proposing this rule, EPA requested comments on the District's threshold for public notification of its permitting actions. Only the District commented on this subject.

The District's rule provides public notice only for those permit actions that involve emission units with a combined potential to emit (PTE) in excess of one of the thresholds listed in its Rule 26.7. The District believes that PTE is the best measure of the ''size'' of project that should be subject to public notice. The District also clarified that the PTE thresholds for public comment are not based on the net emission increase from the emission units. It is, therefore, misleading to compare the public notice thresholds to the federal significance levels (which are based on net emission increases).

Response #2: EPA solicited comments on the public notice thresholds to gauge public interest in being notified of permit actions for projects with a lower combined PTE than the rule's thresholds. The fact that we only received one comment (from the District) indicates that the District's requirements are sufficient for providing opportunity for public review and comment on its on permitting actions. Therefore, we agree with the District's comment on this subject and will finalize approval of Rule 26.7 for incorporation into the SIP.

IV. EPA Evaluation and Final Action

For the reasons explained above, the comments submitted by the District have not changed our evaluation of the rules as described in our proposed action. EPA is, therefore, finalizing its limited approval and limited disapproval of District Rules 10–15, 15.1, 16, 23–24, 26, 26.1–26.10, and 29–30. Our final action is a limited approval and limited disapproval because the Rules contain deficiencies and are not fully consistent with CAA requirements, EPA regulations and EPA policy. The District must revise its Rules 10 and 26 to address the following deficiencies:

• Rule 10 must be clarified or set specific conditions for the exemption from an authority to construct (ATC) permit for relocating emission units. The rule must be made clear to avoid potential circumvention of BACT and public notice requirements for an ATC. The rule must specify that only very small units are eligible for this exemption for relocation within five miles in the District. The District must also revise Section A.3 of its Rule 26.3 (NSR exemption for relocated units) to reflect revisions made to Rule 10 in correcting the deficiency.

• Rule 26 must be revised to address the following three deficiency issues:

Emission Reduction Credits must be surplus at the time of use.

This rule must be revised to ensure that ERCs required for offsetting air emission increases are surplus to reductions otherwise required by the CAA. Section 173(c)(2) of the CAA requires that sources provide offsets in order to obtain an ATC permit. Further, the Act requires that offsetting emission reductions must be federally enforceable at the time that the NSR permit is issued [section 173(a)], and in effect by the time the source commences operation [section 173(c)(1)]. In addition, section 173(c)(2) requires that the offsets be surplus of all other requirements of the Act. The CAA does not allow the use of ERCs which were surplus some years ago when they were generated, but which are no longer surplus (for example to RACT or MACT requirements) at the time that the ERC is used. Thus, the District is required to amend its rule to provide for adjusting all ERCs to ensure that the requirement of section 173(c)(2) for surplus ERCs is met at the time that the ERCs are used.

To be corrected, Rules 26.2.B and 26.6.D.7.b must prohibit the use of the ERCs that are not surplus to the CAA requirements at the time of use. The District must revise Rules 26.2.B and 26.6.D.7 to add this requirement. The District must also revise the definition of major modification in Rule 26.1.16, to add that in calculating contemporaneous net emission

increases, ERCs that are not surplus at the time of use shall not be included.

Violation of Ambient Air Increments

Rule 26 must also be revised to provide authority to the District to deny a permit to operate to any source which would cause increases in pollution concentrations over the baseline concentration and would cause a violation of ambient air increments.

Alternative Analysis

Rule 26's reliance on California Environmental Quality Act (CEQA) for the alternatives analysis required by Section 173(a)(5) of the Act must be revised. The alternatives analysis must not be circumvented by qualifying for a statutory or categorical exemptions, or a negative declaration pursuant to CEQA. The District must revise the rule to remove any exemptions. The District may revise the rule so that the District bases its independent conclusions for the alternatives analysis on materials developed under CEQA. However, the District must independently conclude that the alternatives analysis whether based on CEQA or other information demonstrates the benefits of the proposed source significantly outweigh the environmental and social cost.

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 and limited disapproval of District rules 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 District and are currently in effect in the District. EPA's final limited disapproval action does not prevent the District 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 SIP. 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.

V. Next Action

The District will have 18 months from the effective date of this final action to correct the deficiencies delineated by EPA in Section IV above, to avoid federal sanctions. See section 179(b) of the CAA. The District's failure to correct the deficiencies will also trigger the Federal implementation plan requirements under 110(c).

VI. Administrative Requirements

1. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

2. 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: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

3. 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 affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to 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 Executive Order 13084 do not apply to this rule.

4. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a

federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

5. 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).

6. 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.

7. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

8. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

9. 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 February 5, 2001. 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: September 5, 2000.

Felicia Marcus,

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 (b)(5), (c)(56)(ii)(C), (c)(95)(ii)(C), (c)(179)(i)(D)(*2*), (c)(187)(i)(B)(*4*), (c)(188)(i)(D)(*4*), (c)(190)(i)(A)(*3*), (c)(193)(i)(E), (c)(196)(i)(B)(*2*), (c)(225)(i)(G)(*2*), (c)(241)(i)(C)(*3*), and (c)(255)(i)(G) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(5) Ventura County Air Pollution Control District.

(i) Previously approved on September 22, 1972 and now deleted without replacement Rule 18.

* * * * *

(c) * * *

(56) * * *

(ii) * * *

(C) Previously approved on June 18, 1982 and now deleted without replacement Rule 25.

* * * * *

(95) * * *

(ii) * * *

(c) Previously approved on June 18, 1982 and now deleted without replacement Rule 21.

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(179) * * *

(i) * * *

(D) * * *

(*2*) Rule 30 adopted on May 30, 1989.

* * * * *

(187) * * *

(i) * * *

(B) * * *

(*4*) Rules 26.A (''General''), 26.8 and 26.9 adopted on October 22, 1991.

* * * * *

(188) * * *
(i) * * *
(D) * * *
(*4*) Rule 29 adopted on October 22, 1991.
* * * * *
(190) * * *
(i) * * *
(A) * * *
(*3*) Rule 24 adopted on September 15, 1992.
* * * * *
(193) * * *
(i) * * *
(E) Ventura County Air Pollution Control District
(1) Rule 26.7 adopted on December 22, 1992.
* * * * *
(196) * * *
(i) * * *
(B) * * *
(*2*) Rule 15.1 adopted on October 12, 1993.
* * * * *
(225) * * *
(i) * * *
(G) * * *
(*2*) Rules 10, 11, 12, 13, 14, 15 and 16 adopted on June 13, 1995.
* * * * *
(241) * * *
(i) * * *
(C) * * *
(*3*) Rule 23 adopted on July 9, 1996.
* * * * *
(255) * * *
(i) * * *
(G) Ventura County Air Pollution Control District.
(*1*) Rules 26.1, 26.2, 26.3, 26.4, 26.5, 26.6 and 26.10 adopted on January 13, 1998.
* * * * *

[FR Doc. 00–31050 Filed 12–6–00; 8:45 am]
BILLING CODE 6560–60–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[USCG–1999–6095]

RIN 2115–AF88

Citizenship Standards for Vessel Ownership and Financing; American Fisheries Act

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends citizenship requirements for fishing vessels of less than 100 feet in length that are eligible for a fishery endorsement, by increasing the percentage of interest in a vessel required to be owned and controlled by U.S. citizens in corporations. The percentage increased is from more than 50 percent to at least 75 percent. We add provisions making fishery endorsements of documented fishing vessels chartered or leased to a person who is not a citizen or to an entity which is ineligible to own a documented fishing vessel invalid. We also prohibit fishery endorsement for a fishing vessel mortgaged to a trustee if the mortgage interest is issued, assigned, transferred, or held in trust for a person not eligible to own a documented fishing vessel, even if the trustee is eligible to own a documented fishing vessel.

DATES: This final rule becomes effective on October 1, 2001.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–6095 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Patricia J. Williams, Coast Guard, telephone 304–271–2400. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 27, 2000, we published a notice of proposed rulemaking entitled Citizenship Standards for Vessel Ownership and Financing; American Fisheries Act [USCG–1999–6095] in the **Federal Register** (65 FR 46137). No public hearing was requested and none was held.

Background and Purpose

For reasons and purposes as discussed in the NPRM the Coast Guard amends its fishery endorsement regulations as mandated by the 105th U.S. Congress (Pub. L. 105–277) outlining fishery endorsement eligibility for fishing vessels less than 100 feet in length. The American Fisheries Act (AFA) requires a real, effective, and enforceable U.S. ownership threshold for U.S.-flag fishing vessels. Under this Act, U.S. citizens must own and control at least 75 percent of the ownership interest in any U.S.-flag fishing vessel. The Act is intended to ensure that vessels with a fishery endorsement are truly controlled by citizens of the United States. The Act also increases the penalties for fishery endorsement violations and is intended to discourage willful noncompliance with the new requirements.

Discussion of Comments and Changes

The Coast Guard received 12 comments from two respondents addressing the proposed changes to the citizenship requirements for U.S.-flag fishing vessels with a fishery endorsement. Each respondent highlighted several different items within the proposed rule.

One comment felt that the proposed change to § 67.11 goes too far by eliminating the fishing vessel exemption on selling, mortgaging, leasing, chartering, delivering, or otherwise transferring of the vessel to a non-U.S. citizen without the prior approval of the Maritime Administration. The Coast Guard agrees. Our initial intent was to ensure full compliance with the American Fisheries Act and to ensure there is no confusion among the regulated community. By removing paragraphs (b)(1) and (b)(3) we inadvertently exceeded the scope of the mandate. We have added a paragraph (c) to this section that clarifies vessels less than 100 feet must comply with the Fishery Endorsement requirements of the part, and vessels 100 feet and greater must comply with the requirements found in 46 CFR part 356.

Both respondents stated our proposed restrictions on chartering should apply only to fish harvesting vessels, and not to fish processing or fish tender vessels. We have reviewed the issue, as well as the regulations applicable to larger vessels, implemented by the Maritime Administration (MARAD), the agency with the authority of administering the AFA on vessels greater than or equal to 100 feet in length. We have determined that the regulations regarding chartering of vessels less than 100 feet should be the same as those regarding larger vessels. Thus, we have added language to § 67.21(d)(3) that will not restrict time or voyage charters to Non-Citizens of dedicated Fish Processing or Fish Tender Vessels. This change will bring the regulations for vessels less than 100 feet into symmetry with the regulations for larger vessels, while still invalidating fishery endorsements whenever a fish harvesting vessel is chartered to a Non-Citizen. Bareboat charters of any fishing industry vessel to

Non-Citizens will also invalidate the vessel's fishery endorsement.

Both respondents questioned the efficiency of having the Commandant review and approve every loan by a Non-Citizen that is secured by a mortgage, regardless of vessel length. Both suggested that the Coast Guard accept arrangements approved by MARAD for vessels greater than or equal to 100 feet. This has always been the intent of the Coast Guard. We have added to 46 CFR 67.21(f) in order to clarify this intent and prevent confusion among the regulated industry. Additionally, we are adding language to that same section that will allow owners of vessels less than 100 feet to presume Commandant approval of standard loan and mortgage agreements from Non-Citizen lenders, that have received general approval under MARAD's regulations. For those vessels under 100 feet that are entering into non-standard loan and mortgage agreements with Non-Citizen lenders, Commandant approval will proceed on a case-by-case basis.

One comment raised a concern that redefining ''control'' in § 67.31 ''Stock or equity interest requirements'' would unnecessarily subject non-fishing industry vessels to the more stringent requirements included in the AFA. The Coast Guard agrees with this comment. In order to ensure the AFA definition of control is not applied to non-fishing industry vessels, we have split the definition into §§ 67.31(b) and (c), and moved the current § 67.31(c) to § 67.31(d).

Both respondents noted that certain larger vessels that were ''grandfathered'' by the AFA have been given a 15-day period to correct an invalid fishery endorsement. MARAD spelled out the procedures for such a correction in 46 CFR 356.47(b). We did not address the issue in our proposed regulations because we no longer have authority over these vessels. However, it has always been our intention to accept a determination by MARAD that a correction had occurred, and thus continue to recognize a vessel's fishery endorsement. Additionally, the Coast Guard plans to work closely with the Maritime Administration to ensure that notification of a vessel's fishery endorsement ineligibility takes place in a timely and uniform manner.

Both respondents noted that our proposed changes did not include reference to the five vessels specifically granted exemptions by Congress in section 203(g) of the AFA. These vessels were not included in our proposal because they are all over 100 feet in length, and thus outside of our authority. MARAD listed these vessels in 46 CFR 356.51(c) as exempt from the AFA requirements. All are eligible for documentation.

One comment expressed confusion regarding the application procedures outlined in § 67.141. The regulation requires that all vessels, regardless of length, submit certain materials for documentation. This includes the citizenship oath on the CG–1258 documentation application form. Vessels greater than or equal to 100 feet in length must also meet the requirements MARAD has established in 46 CFR part 356, subpart C, including the more extensive citizenship affidavit. Vessels not under MARAD's jurisdiction (less than 100 feet in length) do not need to complete the more extensive form.

One comment noted, as a technicality, that the term ''Exclusive Economic Zone'' was not being used consistently in our proposed rule. We have made the necessary changes in §§ 67.142(b)(3) and 67.142(c) to ensure consistent usage.

The Coast Guard made two additional changes from the proposed language. In § 67.350, we reworded paragraph (b)(1) in order to clarify the evidence needed to obtain a petition for an exemption from the citizenship requirements. This language change does not affect the substance of the rule; it clarifies that the required evidence must show the ownership of the vessel as of October 1, 2001, whether you are submitting your petition before, on, or after that date.

In § 67.21 we re-designated proposed paragraph (e) as paragraph (f), and added a new paragraph (e) exempting vessels engaged in the fisheries in the exclusive economic zone (EEZ) under the authority of the Western Pacific Fishery Management Council, and certain vessels operating under the authority of the South Pacific Regional Fisheries Treaty, as set forth in the American Fisheries Act. We did not include this provision in the NPRM because a review of vessels under the authority of the Council and Treaty showed all such vessels to be greater than 100 feet and therefore outside our authority. We now include this provision to ensure full compliance with the American Fisheries Act and to ensure there is no confusion among the regulated community.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Marine Safety Management System (MSMS) shows that about 36,000 vessels have fishery endorsements. This regulation impacts documented vessels with fishery endorsements that are less than 100 feet. About 35,500 vessels with fishery endorsements are less than 100 feet. Of these, we researched a random sample of 1,010 vessels in order to achieve a 95 percent confidence level. We found that the change to minimum U.S. ownership requirements from ''more than 50 percent'' to ''at least 75 percent'' affects one of the vessels in the random sample. This means that 0.099 percent of the random sample do not meet the requirement. The margin of error is plus or minus 3.04 percent. Applying this percentage to the population, we expect that the owner of 35 vessels will not meet the change in owner citizenship requirement if current ownership levels in each company remain the same (0.099 percent of 35,500 vessels).

In the random sample, there are 843 vessels (83 percent of the affected population) that are owned by individual persons and 167 vessels (17 percent of the affected population) that are owned by corporations or companies. All individual owners are already required to be U.S. citizens in order to document a vessel. Therefore, these vessels and individuals are considered to meet the citizenship requirement, and have 100 percent U.S. ownership. Corporations, partnerships or limited liability companies are required to attest to the level of ownership by U.S. citizens by checking a box in the application for documentation. The ''Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; Redocumentation'' (CG–1258 (REV.9–97)) has four choices for reporting the level of ownership by U.S. citizens in a corporation. The choices are: less than 50 percent, at least 50 percent, more than 50 percent but less than 75 percent, and 75 percent or more. One hundred sixty six (166) corporations certified that the ownership level by U.S. citizens is 75 percent or more. One certified that its corporation's percentage of stock owned by U.S. citizens who are eligible to document vessels was more than 50 percent but less than 75 percent.

Costs: For further analysis, we assume that the 35 adversely affected vessel owners have more than 50 but less than 75 percent of stock owned by U.S. citizens. We further assume that each vessel owner prefers to continue fishing in the Exclusive Economic Zone of the United States. Therefore, we expect each vessel owning company will make changes to its U.S. ownership level. The change of U.S. ownership level could entail the following: adding an additional investor, selling stock to U.S. citizens, adding a partner, or removing a partner.

Once each vessel owning company has met the ownership criteria, the vessel's fishery endorsement will be renewed, as it will be in any other year. Thus, the cost of this rulemaking is directly associated with the change of U.S. ownership level made by each of the 35 vessel owning companies. We assume that each company will hire a law firm to complete the articles of incorporation or any other documents needed to reflect the changes to the ownership levels, and that the law firm will charge about $600 for its services. The one time cost of changing the ownership structure for the 35 companies is $21,000.

We do not expect the restriction to leases and charters by non-U.S. citizens to impact any vessel owners. Similarly, we do not expect the restriction on foreign controlled mortgages to impact any vessels. Therefore, these regulations cause no additional cost to vessel owners, operators, or managers.

Benefits: The changes in the law necessitate this rulemaking. The regulation gives U.S. citizens a higher level of ownership in the vessels that harvest fish in the U.S. Exclusive Economic Zone. Consequently, more of the profits from the fishery industry will accrue to U.S. citizens.

Small Entities

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

This rule impacts the owners of about 35,500 vessels that are documented with fishery endorsements. These vessels are less than 100 feet in length, and we considered each one to be owned by a small entity. As shown by the sample statistics, we expect 35 entities to be adversely affected by the rulemaking. We do not consider the number of adversely affected entities to be a substantial number for they represent 0.099 percent of all entities that would have to comply with the requirements.

The Small Business Administration has determined that the size standard for small businesses involved in the fishing industry is $3 million in annual revenues (Standard Industry Codes 0912, 0913, 0919, and 0921). The imposed burden of $600 represents 0.02 percent for entities with $3 million in annual revenues. For entities with $60,000 and $30,000 in annual revenues, the burden represents 1 percent and 2 percent of annual revenues, respectively. We do not consider this cost to create a significant economic impact on the affected entities.

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

Assistance for Small Entities

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

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

Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rulemaking adds a new collection of information burden to companies that no longer meet the threshold of at least 75 percent ownership by U.S. citizens. This regulation allows these companies to apply for an exemption from the 75 percent U.S. ownership level. The application and related submissions comprise a new collection of information burden.

We presented an estimate of the burden this rulemaking will cause for public comment in the NPRM. No comments were received regarding the collection of information, and we perceive this to mean acceptance of the burden by the public.

The information collection requirements of the rule are addressed in the previously approved OMB collection titled ''Vessel Documentation'' (OMB 2115–0110).

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has not approved the collection, and we will publish its approval when it occurs. The section numbers are §§ 67.350 and 67.352.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

We have analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132, (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship or on the current distribution of power and responsibilities among various local officials. Therefore, consultation with the State and local officials was not necessary.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 67

Citizenship; Fishery endorsements, Fishing vessels, Mortgages, Penalties, Vessel Documentation.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—DOCUMENTATION OF VESSELS

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

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C 9118; 46 U.S.C. 2103, 2107, 2110, 10102; 46 U.S.C. app. 841a, 876; 49 CFR 1.45, 1.46.

2. Amend § 67.11 by adding paragraph (c) to read as follows:

§ 67.11 Restriction on transfer of an interest in documented vessels to foreign persons; foreign registry or operation.

* * * * *

(c) The exemption in paragraph (b) of this section does not relieve all vessels from meeting the fishery endorsement requirements of this part. If your vessel is less than 100 feet in length and is a fishing vessel, fish processing vessel, or fish tender vessel as defined in 46 U.S.C. 2101, you must meet the fishery endorsement requirements set out in this part. Each vessel 100 feet and greater in length applying for a fishery endorsement is regulated by the Maritime Administration requirements found in 46 CFR part 356.

* * * * *

3. Amend § 67.21 by revising paragraph (d) and adding paragraphs (e) and (f) to read as follows:

§ 67.21 Fishery endorsement.

* * * * *

(d) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section loses that eligibility during any period in which it is:

(1) Owned by a partnership which does not meet the requisite citizenship requirements of § 67.35(b);

(2) Owned by a corporation which does not meet the citizenship requirements of § 67.39(b); or

(3) Chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement, except that time charters, voyage charters and other charters that are not a demise of the vessel may be entered into with Non-Citizens for the charter of dedicated Fish Tender Vessels and Fish Processing Vessels that are not engaged in the harvesting of fish or fishery resources without the vessel losing its eligibility for a fishery endorsement.

(e) A vessel operating with a fishery endorsement on October 1, 1998, under the authority of the Western Pacific Fishery Management Council, or a purse seine vessel engaged in tuna fishing outside of the EEZ of the United States or pursuant to the South Pacific Regional Fisheries Treaty may continue to operate as set out in 46 U.S.C. 12102(c)(5), provided that the owner of the vessel continues to comply with the fishery endorsement requirements that were in effect on October 1, 1998.

(f) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible if an instrument or evidence of indebtedness, secured by a mortgage of the vessel, to a trustee eligible to own a vessel with a fishery endorsement is issued, assigned, transferred, or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Commandant determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee:

(1) Is organized as a corporation that meets § 67.39(b) of this part, and is doing business under the laws of the United States or of a State;

(2) Is authorized under those laws to exercise corporate trust powers which meet § 67.36(b) of this part;

(3) Is subject to supervision or examination by an official of the United States Government or a State;

(4) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(5) Meets any other requirements prescribed by the Commandant.

For vessels greater than or equal to 100 feet in length, approval of such an arrangement from the Maritime Administration will be accepted as evidence that the above conditions are met and will be approved by the Commandant. For vessels less than 100 feet, a standard loan and mortgage agreement that has received general approval under 46 CFR 356.21 will be accepted as evidence that the above conditions are met and will be approved by the Commandant.

4. Revise §§ 67.31(b) and (c), and add § 67.31(d) to read as follows:

§ 67.31 Stock or equity interest requirements.

* * * * *

(b) For the purpose of stock or equity interest requirements for citizenship under this subpart, control of non-fishing industry vessels includes an absolute right to: Direct corporate or partnership business; limit the actions of or replace the chief executive officer, a majority of the board of directors, or any general partner; direct the transfer or operations of any vessel owned by the corporation or partnership; or otherwise exercise authority over the business of the corporation or partnership. Control does not include the right to simply participate in these activities or the right to receive a financial return, e.g., interest or the equivalent of interest on a loan or other financing obligations.

(c) For the purpose of this section, control of a fishing industry vessel means having:

(1) The right to direct the business of the entity that owns the vessel;

(2) The right to limit the actions of or to replace the chief executive officer, the majority of the board of directors, any general partner, or any person serving in a management capacity of the entity that owns the vessel;

(3) The right to direct the transfer, the operation, or the meaning of a vessel with a fishery endorsement.

(d) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with the trade endorsement sought.

5. In § 67.35, revise the introductory text and paragraph (b) to read as follows:

§ 67.35 Partnership.

A partnership meets citizenship requirements if all its general partners are citizens, and:

* * * * *

(b) For the purpose of obtaining a fishery endorsement, at least 75 percent

of the equity interest in the partnership, at each tier of the partnership and in the aggregate, is owned by citizens.

* * * * *

6. Amend § 67.36 by revising the introductory text of paragraphs (a), (b), and (c) and by revising paragraph (b)(2) to read as follows:

§ 67.36 Trust.

(a) For the purpose of obtaining a registry or recreational endorsement, a trust arrangement meets citizenship requirements if:

* * * * *

(b) For the purpose of obtaining a fishery endorsement, a trust arrangement meets citizenship requirements if:

* * * * *

(2) At least 75 percent of the equity interest in the trust, at each tier of the trust and in the aggregate, is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lake endorsement or both, a trust arrangement meets citizenship requirements if:

* * * * *

7. Revise § 67.37 to read as follows:

§ 67.37 Association or joint venture.

(a) An association meets citizenship requirements if each of its members is a citizen.

(b) A joint venture meets citizenship requirements if each of its members is a citizen.

8. Revise § 67.39 by revising the introductory text of paragraphs (a), (b), and (c) and by revising paragraph (b)(2) to read as follows:

§ 67.39 Corporation.

(a) For the purpose of obtaining a registry or a recreational endorsement, a corporation meets citizenship requirements if:

* * * * *

(b) For the purpose of obtaining a fishery endorsement, a corporation meets citizenship requirements if:

* * * * *

(2) At least 75 percent of the stock interest in the corporation, at each tier of the corporation and in the aggregate, is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, a corporation meets citizenship requirements if:

* * * * *

9. Remove § 67.45.

§ 67.45 [Removed]

10. Amend § 67.141 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 67.141 Application procedure; all cases.

* * * * *

(b) Each vessel 100 feet and greater in length applying for a fishery endorsement must meet the requirements of 46 CFR part 356 and must submit materials required in paragraph (a) of this section.

(c) Upon receipt of the Certification of Documentation and prior to operation of the vessel, ensure that the vessel is marked in accordance with the requirements set forth in subpart I of this part.

11. Add § 67.142 to read as follows:

§ 67.142 Penalties.

(a) An owner or operator of a vessel with a fishery endorsement who violates Chapter 121 of Title 46, U.S. Code or any regulation issued thereunder is liable to the United States Government for a civil penalty of not more than $10,000. Each day of a continuing violation is a separate violation.

(b) A fishing vessel and its equipment are liable to seizure and forfeiture to the United States Government—

(1) When the owner of the fishing vessel, or the representative or agent of the owner, knowingly falsifies applicable information or knowingly conceals a material fact during the application process for or application process to renew a fishery endorsement of the vessel;

(2) When the owner of the fishing vessel, or the representative or agent of the owner, knowingly and fraudulently uses a vessel's certificate of documentation;

(3) When the fishing vessel engages in fishing [as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)] within the Exclusive Economic Zone after its fishery endorsement has been denied or revoked;

(4) When a vessel is employed in a trade without an appropriate trade endorsement;

(5) When a documented vessel with only a recreational endorsement operates as a fishing vessel; or

(6) When a vessel with a fishery endorsement is commanded by a person who is not a citizen of the United States.

(c) In addition to penalties under paragraphs (a) and (b) of this section, the owner of a vessel with a fishery endorsement is liable to the United States Government for a civil penalty of up to $100,000 for each day in which the vessel has engaged in fishing within the Exclusive Economic Zone, if the owner of the fishing vessel, or the representative or agent of the owner, knowingly falsifies applicable information or knowingly conceals a material fact during the application process for or application process to renew a fishery endorsement of the vessel.

12. Revise § 67.233(b) to read as follows:

§ 67.233 Restrictions on recording mortgages, preferred mortgages, and related instruments.

* * * * *

(b) A mortgage of a vessel 100 feet or greater in length applying for a fishery endorsement is eligible for filing and recording as a preferred mortgage only if it meets the requirements of this part and the requirements of 46 CFR 356.19.

* * * * *

13. Add subpart V to read as follows:

Subpart V—Exemption From Fishery Endorsement Requirements Due to Conflict With International Agreements

Sec.

67.350 Conflicts with international agreements.
67.352 Applicability.

Subpart V—Exception From Fishery Endorsement Requirements Due to Conflict With International Agreements

§ 67.350 Conflicts with international agreements.

(a) If you are an owner or mortgagee of a fishing vessel less than 100 feet in length and believe that there is a conflict between 46 CFR part 67 and any international treaty or agreement to which the United States is a party on October 1, 2001, and to which the United States is currently a party, you may petition the National Vessel Documentation Center (NVDC) for a ruling that all or sections of part 67 do not apply to you with respect to a particular vessel, provided that you had an ownership interest in the vessel or a mortgage on the vessel on October 1, 2001. You may file your petition with the NVDC before October 1, 2001, with respect to international treaties or agreements in effect at the time of your petition which are not scheduled to expire before October 1, 2001.

(b) If you are filing a petition for exemption with the NVDC for reasons stated in paragraph (a) of this section, your petition must include:

(1) Evidence of the ownership structure of the vessel petitioning for an exemption as of October 1, 2001, and any subsequent changes to the ownership structure of the vessel;

(i) If you are filing your petition before October 1, 2001, you may substitute evidence of the ownership structure as it exists on the date you file your petition;

(2) A copy of the provisions of the international agreement or treaty that you believe is in conflict with this part;

(3) A detailed description of how the provisions of the international agreement or treaty conflict with this part;

(4) For all petitions filed before October 1, 2001, a certification that the owner intends to transfer no ownership interest in the vessel to a non-U.S. citizen for the following year.

(5) For all petitions filed after October 1, 2001, a certification that no ownership interest was transferred to a non-U.S. citizen after September 30, 2001.

(c) You must file a separate petition for each vessel requiring an exemption unless the NVDC authorizes consolidated filing. Petitions should include two copies of all required materials and should be sent to the following address: National Vessel Documentation Center, 792 TJ Jackson Drive, Falling Water, West Virginia, 25419.

(d) Upon receipt of a complete petition, the NVDC will review the petition to determine whether the effective international treaty or agreement and the requirements of this part are in conflict. If the NVDC determines that this part conflicts with the effective international treaty or agreement, then the NVDC will inform you of the guidelines and requirements you must meet and maintain to qualify for a fisheries endorsement.

(e) If the vessel is determined through the petition process to be exempt from all or sections of the requirements of this part, then you must annually, from the date of exemption, submit the following evidence of its ownership structure to the NVDC:

(1) The vessel's current ownership structure;

(2) The identity of all non-citizen owners and the percentages of their ownership interest in the vessel;

(3) Any changes in the ownership structure that have occurred since you last submitted evidence of the vessel's ownership structure to the NVDC; and

(4) A statement ensuring that no interest in the vessel was transferred to a non-citizen during the previous year.

§ 67.352 Applicability.

The exemption in this subpart shall not be available to:

(a) Owners and mortgagees of a fishing vessel less than 100 feet in length who acquired an interest in the vessel after October 1, 2001; or

(b) Owners of a fishing vessel less than 100 feet in length, if any ownership interest in that vessel is transferred to or otherwise acquired by a non-U.S. citizen after October 1, 2001.

Dated: November 22, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–31094 Filed 12–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014-0137-02; I.D. 113000E]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Virginia

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Virginia has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Virginia for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Virginia that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Virginia.

DATES: Effective 0001 hours, December 7, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in Virginia is 21.31676 percent, or 2,368,546 lb (1,074,354 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1999, a total of 2,130,553 lb (966,403 kg) were landed in Virginia, creating a 9,857 lb (4,471 kg) overage that was deducted from the amount allocated for landings in the State during 2000 (65 FR 33486, May 24, 2000). The resulting 2000 quota for Virginia is 2,358,689 lb (1,069,883 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Virginia has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 7, 2000, further landings of summer flounder in Virginia by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 7, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Virginia for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Bruce C. Morehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31233 Filed 12–06–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014-0137-02; I.D. 113000D]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

DATES: Effective 0001 hours, December 16, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, or 849,672 lb (385,405 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of New York has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 16, 2000, further landings of summer flounder in New York by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 16, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31234 Filed 12–06–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325-0063-02; I.D. 112700C]

Fisheries of the Exclusive Economic Zone Off Alaska; A Cost Recovery Program for the Individual Fishing Quota Program

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

ACTION: Notification of standard prices and fee percentage for North Pacific halibut and sablefish Individual Fishing Quota (IFQ) cost recovery program.

SUMMARY: The National Marine Fisheries Service publishes IFQ standard prices and notification of adjustment of the IFQ fee percentage for the IFQ Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. This action is intended to provide holders of halibut and sablefish IFQs with information to calculate the payments required for IFQ cost recovery fees due by January 31, 2001.

DATES: The IFQ cost recovery fees for calendar year 2000 are due on or before January 31, 2001.

FOR FURTHER INFORMATION CONTACT: Kristie Balovich, Fee Coordinator, 907-586-7344.

SUPPLEMENTARY INFORMATION:

Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ Programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ Programs began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act, section 304(d)(2)(A), was amended (Pub.L. 104-297) to require the Secretary of Commerce to ''collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program.'' Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to

reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or of quota share (QS) by entry-level and small-vessel fishermen.

NMFS published, on December 27, 1999 (64 FR 72302), a proposed rule to implement the IFQ Cost Recovery Program and published the final rule on March 20, 2000 (65 FR 14919). The final regulations implementing the IFQ Cost Recovery Program are set forth at 50 CFR 679.45.

Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

Fee Percentage

Three percent of the ex-vessel value of IFQ halibut and IFQ sablefish harvested is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. Regulations at § 679.45(d) allow the Administrator, Alaska Region, NMFS (Regional Administrator) to reduce the fee percentage if actual management and enforcement costs could be recovered through a lesser percentage. In this event, the Regional Administrator will publish a notification of any adjustment of the IFQ fee percentage in the **Federal Register** pursuant to § 679.45(d)(4).

For 2000, the Regional Administrator has determined that a fee of 1.8 percent (0.018) is necessary to recover the actual management and enforcement costs. Therefore, the Regional Administrator is adjusting the cost recovery fee applicable to years 2000 IFQ landings from 3 percent (0.03) to 1.8 percent (0.018).

Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish. This includes any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish).

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value, ''actual ex-vessel value'' and ''standard ex-vessel value.'' ''Actual ex-vessel value'' is the amount of money an IFQ permit holder received as payment for his or her IFQ fish sold. ''Standard ex-vessel value'' is the default value on which to base fee liability calculations. However, IFQ permit holders have the option of using ''actual ex-vessel value'' if they can satisfactorily document those values.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars, per IFQ equivalent pound, for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and as headed and gutted (''net'') weight for halibut. NMFS calculates the standard prices to reflect, as closely as possible, by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings. The standard prices for IFQ halibut and IFQ sablefish are listed in the following table. Data from ports are combined as necessary to protect confidentiality of data submissions.

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2000 IFQ SEASON

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
CORDOVA	March 31	*	*
	April 30	$2.50	*
	May 31	$2.52	$2.63
	June 30	$2.24	*
	July 31	$2.47	*
	August 31	$2.50	*
	September 30	*	*
	October 31	*	*
	November 30	*	*
DUTCH HARBOR	March 31	*	*
	April 30	*	*
	May 31	$2.32	$2.79
	June 30	$2.18	$2.87
	July 31	$2.25	*
	August 31	$2.26	$2.11
	September 30	$2.27	*
	October 31	$2.27	*
	November 30	$2.27	*
HOMER	March 31	$2.86	*
	April 30	$2.61	$2.45
	May 31	$2.62	$2.31
	June 30	$2.53	*
	July 31	$2.65	$2.08
	August 31	$2.59	*
	September 30	$2.61	$2.20
	October 31	$2.61	$2.20
	November 30	$2.61	$2.20

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2000 IFQ SEASON—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
KODIAK	March 31	$2.86	*
	April 30	$2.48	$2.06
	May 31	$2.51	$2.17
	June 30	$2.33	*
	July 31	$2.36	*
	August 31	$2.46	*
	September 30	$2.49	$2.40
	October 31	$2.49	$2.40
	November 30	$2.49	$2.40
PETERSBURG	March 31	$2.80	*
	April 30	$2.52	*
	May 31	$2.58	*
	June 30	$2.41	$2.23
	July 31	$2.51	*
	August 31	$2.56	*
	September 30	$2.60	*
	October 31	$2.60	*
	November 30	$2.60	*
SEWARD	March 31	$2.95	$2.40
	April 30	$2.49	$2.49
	May 31	$2.51	$2.36
	June 30	$2.41	$2.22
	July 31	$2.48	$2.26
	August 31	$2.55	*
	September 30	$2.52	*
	October 31	$2.52	*
	November 30	$2.52	*
SITKA	March 31	*	*
	April 30	$2.50	*
	May 31	$2.55	*
	June 30	$2.55	*
	July 31	$2.58	*
	August 31	*	*
	September 30	*	*
	October 31	*	*
	November 30	*	*
[1]BERING SEA	March 31	*	*
	April 30	$2.39	$2.35
	May 31	$2.21	$2.26
	June 30	$2.16	$2.26
	July 31	$2.20	$2.01
	August 31	$2.22	$2.03
	September 30	$2.22	$2.10
	October 31	$2.22	$2.10
	November 30	$2.22	$2.10
[2]CENTRAL GULF	March 31	$2.89	$2.50
	April 30	$2.53	$2.48
	May 31	$2.51	$2.35
	June 30	$2.41	$2.26
	July 31	$2.51	$2.09
	August 31	$2.49	$2.25
	September 30	$2.52	$2.39
	October 31	$2.52	$2.39
	November 30	$2.52	$2.39
[3]SOUTHEAST	March 31	$2.83	$3.09
	April 30	$2.56	$2.62
	May 31	$2.60	$2.43
	June 30	$2.51	$2.23
	July 31	$2.50	$2.21
	August 31	$2.61	$2.34
	September 30	$2.63	$2.40
	October 31	$2.63	$2.40
	November 30	$2.63	$2.40

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2000 IFQ SEASON—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
[4]ALL-ALASKA	March 31	$2.86	$2.76
	April 30	$2.54	$2.56
	May 31	$2.50	$2.37
	June 30	$2.38	$2.25
	July 31	$2.38	$2.11
	August 31	$2.41	$2.25
	September 30	$2.48	$2.35
	October 31	$2.48	$2.35
	November 30	$2.48	$2.35
[5]ALL	March 31	$2.86	$2.76
	April 30	$2.54	$2.56
	May 31	$2.50	$2.37
	June 30	$2.38	$2.25
	July 31	$2.38	$2.11
	August 31	$2.41	$2.25
	September 30	$2.48	$2.35
	October 31	$2.48	$2.35
	November 30	$2.48	$2.35
	.....	.....	.....

[1]Landing locations Within Port Group - Bering Sea: Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

[2]Landing Locations Within Port Group - Central Gulf of Alaska: Anchor Point, Anchorage, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez.

[3]Landing Locations Within Port Group - Southeast Alaska: Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

[4]Landing Locations Within Port Group - All Alaska: All landing locations included in 1, 2, and 3.

[5]Landing Locations Within Port Group - All Alaska: All landing locations included in 1, 2, and 3. Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Stanwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

*Data not available or not presented to protect confidentiality of data submissions.

This action is required by § 679.45 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 30, 2000.

Clarence Pautzke,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31032 Filed 12–06–00; 8:45 am]

BILLING CODE: 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 236
Thursday, December 7, 2000

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–037–2]

RIN 0579–AB15

Citrus Canker; Payments for Recovery of Lost Production Income

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to recover production income lost as a result of the removal of commercial citrus trees to control citrus canker. These proposed lost production payments, which would serve to complement our October 16, 2000, interim rule that provides for the payment of tree replacement funds to eligible owners of commercial citrus groves, would help to reduce the economic effects of the citrus canker quarantine on affected commercial citrus growers.

DATES: We invite you to comment on this docket. For comments on all portions of this proposed rule except the rule's information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act, consideration will be given only to comments received on or before January 8, 2001. For comments on the Paperwork Reduction Act requirements of this proposed rule, consideration will be given only to comments received on or before February 5, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–037–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–037–2.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants that render the fruit unmarketable, and can cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–15 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. The regulations currently list parts of Broward, Collier, Dade, Hendry, Hillsborough, and Manatee Counties, FL, as quarantined areas for citrus canker.

On October 16, 2000, we published in the **Federal Register** (65 FR 61077–61080, Docket No. 00–037–1) an interim rule that amended the regulations by adding a new section (§ 301.75–15) to provide for the payment of tree replacement funds to eligible owners of commercial citrus groves who have had citrus trees destroyed because of citrus canker. In that interim rule, we noted that we anticipated that additional funds would be made available to allow us to provide payments to the owners of commercial citrus groves for losses in production income resulting from the destruction of trees due to citrus canker. In this document, we are proposing to amend the regulations by adding another new section, § 301.75–16, that would address the payment of funds to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker. That proposed new section is explained in detail below.

Definitions (Section 301.75–1)

We are proposing to amend § 301.75–1, ''Definitions,'' by adding a definition for the term *ACC coverage,* which would be used in proposed new § 301.75–16. We would define *ACC coverage* as ''the crop insurance coverage against Asiatic citrus canker (ACC) provided under the Florida Fruit Tree Pilot Crop Insurance Program authorized by the Federal Crop Insurance Corporation'' (FCIC). This crop insurance pilot covers 29 Florida counties, including the 6 counties that currently contain citrus canker quarantined areas, and allows growers to insure covered citrus tree varieties against both standard perils (losses resulting from freezes, wind, and excess moisture) and losses due to citrus canker (referred to by FCIC as Asiatic citrus canker or ACC). Eligibility for the two sets of perils (standard and ACC) is determined separately; thus, an insured grower may qualify for coverage against the standard perils but not against ACC. While growers located in counties that do not contain quarantined areas qualify for ACC coverage automatically, growers located in counties that do contain quarantined areas are required to obtain an ACC underwriting certification, which describes the status of citrus trees with respect to citrus canker, from APHIS or from the Florida Department of Food and Consumer Services'

Division of Plant Industry (DPI). If a grower's trees are certified by APHIS or DPI as being infected with or exposed to citrus canker, the trees are not eligible for ACC coverage under the crop insurance pilot.

Payments for the Recovery of Lost Production Income (Proposed Section 301.75–16)

The introductory text of proposed § 301.75–16 would provide that our ability to make payments to commercial citrus producers to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker is contingent upon the availability of funds appropriated for that purpose. Because the Secretary of Agriculture has not found it necessary to declare an extraordinary emergency with respect to citrus canker in Florida, the Animal and Plant Health Inspection Service (APHIS) does not have the authority under the Plant Protection Act to establish a compensation program to cover losses associated with the current citrus canker outbreak in that State. Therefore, we may provide payments for the recovery of lost production income only if appropriated funds are made available for that purpose. Such funds have been made available in section 203(e) of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224), which provides that $25 million shall be used by the Secretary to compensate commercial growers for losses due to Pierce's disease, plum pox, and citrus canker. In additional, $58 million were made available for payments to commercial citrus and lime producers in Florida in the Department's fiscal year (FY) 2001 appropriation. Specifically, paragraphs (a) through (e) of section 810 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387) state the following:

(a) The Secretary of Agriculture shall pay Florida commercial citrus and lime growers $26 for each commercial citrus or lime tree removed to control citrus canker in order to allow for tree replacement and associated business costs. Payments under this subsection shall be capped in accordance with the following trees per acre limitations:

(1) In the case of grapefruit, 104 trees per acre;

(2) In the case of valencias, 123 trees per acre;

(3) In the case of navels, 118 trees per acre;

(4) In the case of tangelos, 114 trees per acre;

(5) In the case of limes, 154 trees per acre; and

(6) in the case of other or mixed citrus, 104 trees per acre.

(b) The Secretary of Agriculture shall compensate Florida commercial citrus and lime growers for lost production, as determined by the Secretary of Agriculture, with respect to trees removed to control citrus canker.

(c) To receive assistance under this section, a tree referred to in subsection (a) or (b) must have been removed after January 1, 1986, and before September 30, 2001.

(d) In the case of a removed tree that was covered by a crop insurance tree policy, compensation for lost production under subsection (b) with respect to such a tree shall be reduced by the indemnity received with respect to such a tree. In the case of a removed tree that was not covered by a crop insurance tree policy, although such insurance was available for the tree, compensation for lost production under subsection (b) with respect to such a tree shall be reduced by 5 percent.

(e) The Secretary of Agriculture shall use $58,000,000 of the funds of the Commodity Credit Corporation to carry out this section, to remain available until expended.

Eligibility

Under paragraph (a) of proposed § 301.75–16, the owner of a commercial citrus grove would be eligible to receive payments to recover net income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995. Although the current citrus canker infestation was detected in Florida on September 28, 1995, the State of Florida has identified five commercial citrus groves in Manatee and Highlands Counties that were destroyed to control citrus canker during a limited outbreak of the disease that occurred between 1986 and 1990. The proposed eligibility period would ensure that lost production payments could be made to those growers affected during that limited outbreak in Manatee and Highlands Counties as well as those growers affected during the current outbreak.

Per-Acre Payments

Proposed § 310.75–16(b)(1) would provide the per-acre amounts that would be paid to the owners of eligible commercial citrus groves. The amount that would be paid per acre of destroyed commercial citrus groves would vary, depending on the type of citrus trees that constituted a particular grove.

The per-acre payments that we are proposing in this document are based on the estimated per-acre loss in value of the destroyed groves. This loss in value is the difference between the net present value (NPV) of the original (destroyed) grove before it was infected with or exposed to citrus canker minus the NPV of the replanted grove for its entire productive life.[1] To calculate the NPV of a grove (both original and replanted groves), we used discounted cash flow analysis, which takes into account the quantity, variability, and duration of the forecasted income stream over a specified income projection period. Each year's net income is discounted back to a present worth figure at the appropriate, market-derived discount rate. The valuation model can be expressed in the following equation form, where Y = net income, r = discount rate, and n = number of years in the discount period:

$$NPV = \frac{Y_1}{(1+r)^1} + \frac{Y_2}{(1+r)^2} + \frac{Y_3}{(1+r)^3} + \ldots + \frac{Y_n}{(1+r)^n}$$

To calculate NPV using the above equation, we had to determine net income, the discount rate, and the number of years in the discount period. Each of these inputs is discussed below. A more detailed analysis may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Net income. To determine the per-acre net income for each variety of fruit, we multiplied the yield (number of boxes) per tree by the price per box, then subtracted the production cost per tree to arrive at the cash flow per tree; the cash flow per tree was then multiplied by the number of trees per acre to determine per-acre net income. The values used for the variables in our calculations, which are based on information obtained from the Florida

[1] The expected productive life of a lime grove is 25 years; for other varieties of citrus, the expected productive life of a grove is 36 years. The age of the trees destroyed to date has been mixed, even within individual groves; based on available information, we have determined that the average (mean) age of the trees that have been destroyed was 14 years for grapefruit, 12 years for tangelos, Valencia oranges, and navel oranges, and 4 years for limes.

Agricultural Statistics Service and the University of Florida's Institute of Food and Agricultural Services, are as follows:

GRAPEFRUIT *

Yield (88-lb. boxes per tree)	Years 1–2 0.00	Years 3–5 1.95	Years 6–8 3.19	Years 9–13 4.20	Years 14–19 4.91	Years 20–36 5.28
Price per box	$3.58					
Production costs	Year 1 $10.16 per tree		Year 2 $3.79 per tree		Years 3–36 $1.852 per box	
Trees per acre	104					

* In our October 16, 2000, interim rule, this category was referred to as ''Grapefruit, red seedless.'' It is referred to as ''Grapefruit'' in this proposed rule to conform with the language used in Sec. 810 of Public Law 106–387.

ORANGE, VALENCIA

Yield (88-lb. boxes per tree)	Years 1–2 0.00	Years 3–5 1.18	Years 6–8 2.09	Years 9–13 2.30	Years 14–19 3.64	Years 20–36 4.38
Price per box	$5.29					
Production costs	Year 1 $10.16 per tree		Year 2 $3.79 per tree		Years 3–36 $2.134 per box	
Trees per acre	123					

ORANGE, NAVEL **

Yield (88-lb. boxes per tree)	Years 1–2 0.00	Years 3–5 1.23	Years 6–8 2.69	Years 9–13 3.56	Years 14–19 4.71	Years 20–36 5.67
Price per box	$4.14					
Production costs	Year 1 $10.16 per tree		Year 2 $3.79 per tree		Years 3–36 $1.853 per box	
Trees per acre	118					

** In our October 16, 2000, interim rule, this category of oranges was referred to as ''Orange, early/midseason/navel.'' It is referred to as ''Orange, navel'' in this proposed rule to conform with the language used in Sec. 810 of Public Law 106–387.

TANGELO

Yield (88-lb. boxes per tree)	Years 1–2 0.00	Years 3–5 0.87	Years 6–8 1.90	Years 9–13 2.51	Years 14–19 3.32	Years 20–36 4.00
Price per box	$3.88					
Production costs	Year 1 $10.16 per tree		Year 2 $3.79 per tree		Years 3–36 $1.852 per box	
Trees per acre	114					

LIME

Yield (88-lb. boxes per tree)	Year 1 0.16	Year 2 0.60	Year 3 1.07	Year 4 1.38	Year 5 1.83	Year 6 2.11	Year 7 2.48	Yrs 8–25 2.61
Price per box	$9.11							
Production costs	Year 1 $12.57 per tree			Year 2 $7.79 per tree			Years 3–25 $6.55 per box	
Trees per acre	154							

Discount rate. The discount rate used in the equation differed for original groves and replanted groves. Based on information provided by extension economists in Florida and citrus industry economists, we have applied the following discount rates when calculating the NPV of replanted groves, as replanting would not be expected to occur until the production area is free from citrus canker: 14 percent for grapefruit; 14.5 percent for tangelos and

Valencia and navel oranges; and 13.5 percent for limes. Based on the discount rates applied to production in areas free from citrus canker, we estimated that the following discount rates would be appropriate for income that could be earned from a grove in an area where citrus canker is present: 15 percent for grapefruit; 15.5 percent for tangelos and Valencia and navel oranges; and 14.5 percent for limes. These higher discount rates reflect the increased risk that would be associated with citrus production in an area known to have citrus canker.

Number of years in discount period. The NPV was calculated using a life cycle approach.

The revenues and costs were calculated over a period equal to the expected productive life of a replanted grove, which, as noted previously, is 25 years for lime groves and 36 years for other varieties of citrus.

Based on the recommendations of extension economists and sources within the citrus industry, payments for the recovery of lost production income would be made on a per-acre basis, rather than on a per-tree basis, because output per acre is approximately the same, regardless of the number of trees per acre. Paying on a per-tree basis would likely result in underpayments to growers with older groves, which normally have fewer, but larger and more productive, trees, and in overpayments to growers with newer groves, which normally have more trees that are smaller and produce less fruit per tree than the larger trees. The trend in the industry is to plant more trees per acre; smaller trees allow for easier harvesting, making it easier to find workers willing to do this type of work.

Using the information and methodology set forth in the preceding paragraphs, we have calculated the per-acre NPV for each variety of citrus considered in this proposed rule. The NPV includes the lost production component considered in this proposed rule as well as the tree replacement component addressed in our October 16, 2000, interim rule that established § 301.75–15, ''Funds for the replacement of commercial citrus trees.'' Because the regulations in § 301.75–15 already provide for tree replacement payments, we have subtracted those tree replacement payments (*i.e.,* $26 times the number of trees per acre) from the NPV to arrive at the proposed per-acre lost production payments presented in the following table:

Citrus variety	Trees per acre*	Per-tree payment*	Tree replacement payment (per acre)*	Lost production payment (per acre)	NPV (per acre)
Grapefruit	104	$26	$2,704	$2,925	$5,629
Orange, Valencia	123	26	3,198	5,729	8,927
Orange, navel	118	26	3,068	5,693	8,761
Tangelo	114	26	2,964	1,666	4,630
Lime	154	26	4,004	4,829	8,833
Other or mixed citrus**	104	26	2,704	2,925	5,629

* Trees per acre, pre-tree payment, and tree replacement payment per acre reflect the limitations established in Sec. 810(a) of Public Law 106–387.

** Records provided by the State of Florida list approximately 32 acres of ''other, unidentified'' citrus trees as having been destroyed due to citrus canker before December 31, 1999. Under this proposed rule, the payment for those ''other, unidentified'' citrus trees would be the same as that for grapefruit. Since the time those initial records were provided by Florida, we have been able to determine that the ''other, unidentified'' category of citrus groves is a mix of trees not conveniently categorized. The mix of trees may include grapefruit, oranges, and specialty crops. Based on the fact that 82 percent of the acreage destroyed before December 31, 1999, consisted of grapefruit, APHIS used grapefruit production and cost data to estimate the value of the ''other, unidentified'' groves.

Payment Adjustments

Paragraph (b)(2) of proposed § 301.75–16 would provide for adjustments to be made to the per-acre payments discussed above in those cases where ACC coverage had been available for the destroyed trees. Specifically, under proposed § 301.75–16(b)(2)(i), if the owner of a commercial citrus grove had obtained ACC coverage for trees in his or her grove and had received crop insurance payments following the destruction of the insured trees, the payment provided for under paragraph (b)(1) of this section will be reduced by the total amount of the crop insurance payments received by the commercial citrus grove's owner for the insured trees. This proposed adjustment would enable us to deduct any indemnity for destroyed trees that may have been received by a grower through crop insurance, thus ensuring that the grove owner did not receive two payments for the same destroyed trees.

If the owner of a commercial citrus grove had been eligible to obtain ACC coverage for the trees in his or her grove, but that owner had not obtained the available coverage, proposed § 301.75–16(b)(2)(ii) would provide that the per-acre lost production payment would be reduced by 5 percent, as required by Sec. 810(d) of Public Law 106–387. This would respond to concerns that if APHIS provided full lost production payments to insurance-eligible commercial growers who elected not to obtain ACC coverage against citrus canker losses, those full payments would likely undermine the intent and effectiveness of the Federal crop insurance program by making it appear that crop insurance was not necessary.

How To Apply

Paragraph (c) of proposed § 301.75–16 would provide information on how to apply for lost production payments. This paragraph would state that the form necessary to apply for payments could be obtained from any local citrus canker program office or from the USDA Citrus Canker Eradication Project office in Miami, FL. Completed claim forms would have to be sent to the USDA Citrus Canker Eradication Project office in Winter Haven, FL, which is where the DPI records necessary to validate claims are located. This paragraph would also state that an applicant should, when submitting a completed application, include with the form a copy of the public order that directed the destruction of the trees, the order's accompanying inventory that describes the acreage, number, and variety of trees removed, and documentation verifying that the destruction of trees had been completed and the date of that destruction. Claims for losses attributable to the destruction of trees on or before the effective date of the final rule implementing the provisions of this proposed rule would have to be received within 60 days after the effective date of the final rule. Claims for losses attributable to the destruction of trees after the effective date of the

final rule would have to be received within 60 days after the destruction of the trees.

Executive Order 12866 and Regulatory Flexibility Act

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

The following economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

This proposed rule would amend the citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to recover production income lost as a result of the removal of commercial citrus trees to control citrus canker. These proposed lost production payments, which would serve to complement our October 16, 2000, interim rule that provides for the payment of tree replacement funds to eligible owners of commercial citrus groves, would help to reduce the economic effects of the citrus canker quarantine on affected commercial citrus growers.

As shown in the table below, the United States produced approximately 16,990 tons of oranges, grapefruit, limes, tangerines, and tangelos worth $2.25 billion in 1998, with Florida producing nearly half of that total.

Fruit	1998				
	U.S. production (tons)	Value of U.S. production (millions)	Florida production (tons)	Value of Florida production (millions)	Florida share of production (%)
Oranges	13,857	$1,930.5	6,051	$843.0	43.67
Tangerines	360	96.1	228	61.0	63.41
Grapefruit	2,626	211.9	2,001	161.4	76.20
Limes	19	4.3	14	3.1	72.72
Tangelos	128	11.7	128	11.7	100.00
Total	16,990	2,254.5	8,422	1,080.2	.....

Source: USDA, National Agricultural Statistics Service, *Agricultural Statistics,* 1999.

Removing the infected and exposed trees protects a substantial investment in other citrus groves. While the entire value of citrus produced is not at risk immediately from citrus canker, the disease would, if left unchecked, continue to spread. In time, the entire industry would be at risk.

According to the data provided to APHIS by the State of Florida, approximately 8,418 acres of commercial citrus trees have been destroyed to control citrus canker by November 15, 2000. This figure includes an estimated 7,814 acres of commercial citrus that have been destroyed since the current citrus canker outbreak was detected in September 1995, as well as approximately 604 acres of grapefruit trees from 5 groves in Manatee and Highlands Counties that were destroyed between 1986 and 1990 to control citrus canker during a limited outbreak of the disease during that period.

As shown in the following table, which was prepared using the acreage estimates provided by the State of Florida and the proposed per-acre payments contained in this proposed rule, lost production payments for commercial citrus trees destroyed by November 15, 2000, would total between about $29.1 to $36.5 million. The uncertainty in this estimate is attributable to the fact that, of the 8,418 acres estimated to have been destroyed by November 15, 2000, there are about 1,806 acres that have not yet been broken out by variety in the data available to us. To account for that acreage, we have multiplied the acreage (1,806.38) by the lowest ($1,666) and highest ($5,729) of the proposed per-acre payments to identify the entire range of possible total claims.[2]

Variety	Estimated acreage destroyed by 11/15/00	Proposed per-acre payment	Estimated lost production claims
Grapefruit	3,201.00	$2,925	$9,362,925
Oranges, Valencia	58.30	5,729	334,001
Oranges, navel	380.22	5,693	2,164,592
Tangelos	11.13	1,666	18,543
Limes	2,929.00	4,829	14,144,141
Other or mixed citrus	31.97	2,925	93,512
Subtotal	6,611.62	.....	26,117,714
Variety not yet identified	1,806.38	1,666–5,729	3,009,429–10,348,751

[2] We believe that figure provided in the table for limes—2,929 acres—accounts for all lime acreage destroyed by November 15, 2000, so the presently unidentified acreage can be expected to consist of a mix of grapefruit, Valencia and navel oranges, and tangelos, which collectively account for approximately 3,650 acres in the table. Of that 3,650 acres, grapefruit accounts for 87.6 percent, Valencia oranges for 1.6 percent, navel oranges for 10.4 percent, and tangelos for 0.4 percent. Applying those same percentages to the 1,806.38 acres of currently unidentified citrus would translate to lost production claims of about $5.876 million for that acreage, which would result in total lost production claims for acreage destroyed by November 15, 2000, of about $31.993 million.

Variety	Estimated acreage destroyed by 11/15/00	Proposed per-acre payment	Estimated lost production claims
Total	8,418		29,127,143–$36,466,465

Effects on Small Entities

This proposed rule would establish provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to recover production income lost as a result of the removal of commercial citrus trees to control citrus canker. Therefore, the entities who would be affected by this proposed rule would be citrus growers. The Regulatory Flexibility Act requires that the Agency specifically consider the economic effects of its rules on small entities. The Small Business Administration (SBA) defines a firm engaged in agriculture as ''small'' if it has less than $500,000 in annual receipts. While the majority of citrus growers in Florida would be considered small entities under those SBA guidelines, those growers who would not be classified as small entities account for the majority of the citrus-growing acreage in the State. Based on available information, it appears that most of the citrus canker-related losses in Florida have been incurred by those larger citrus producers. Regardless of the size of the entities affected, we expect that this proposed rule would benefit those commercial citrus growers who are eligible for lost production payments by helping to defray some of the losses and expenses that they have incurred as a result of the ongoing State and Federal efforts to eradicate citrus canker in Florida.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–037–2. Please send a copy of your comments to: (1) Docket No. 00–037–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to recover production income lost as a result of the removal of commercial citrus trees to control citrus canker. Implementing this program would necessitate the use of an information collection activity in the form of an application for funds.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Eligible commercial citrus grove owners in Florida.

Estimated annual number of respondents: 65.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 65.

Estimated total annual burden on respondents: 10 hours.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained by calling Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would be revised to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A-293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400.

2. Section 301.75–1 would be amended by adding a definition of *ACC coverage* to read as follows:

§ 301.75–1 Definitions.

ACC coverage. The crop insurance coverage against Asiatic citrus canker (ACC) provided under the Florida Fruit Tree Pilot Crop Insurance Program authorized by the Federal Crop Insurance Corporation.

* * * * *

3. In Subpart—Citrus Canker, a new § 301.75–16 would be added to read as follows:

§ 301.75–16 Payments for the recovery of lost production income.

Subject to the availability of appropriated funds, the owner of a commercial citrus grove may be eligible to receive payments in accordance with the provisions of this section to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker.

(a) *Eligibility.* The owner of a commercial citrus grove may be eligible to receive payments to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995.

(b) *Calculation of payments.* (1) The owner of a commercial citrus grove who is eligible under paragraph (a) of this section to receive payments to recover lost production income will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment calculated using the following rates:

Citrus variety	Payment (per acre)
Grapefruit	$2,925
Orange, Valencia	5,729
Orange, navel	5,693
Tangelo	1,666
Lime	4,829
Other or mixed citrus	2,925

(2) *Payment adjustments.*

(i) In cases where the owner of a commercial citrus grove had obtained ACC coverage for trees in his or her grove and received crop insurance payments following the destruction of the insured trees, the payment provided for under paragraph (b)(1) of this section will be reduced by the total amount of the crop insurance payments received by the commercial citrus grove's owner for the insured trees.

(ii) In cases where ACC coverage was available for trees in a commercial citrus grove but the owner of the grove had not obtained ACC coverage for his or her insurable trees, the per-acre payment provided for under paragraph (b)(1) of this section will be reduced by 5 percent.

(c) *How to apply for lost production payments.* The form necessary to apply for lost production payments may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Project, 10300 SW 72nd Street, Suite 150, Miami, FL 33173. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the acreage, number, and the variety of trees removed. Your completed application must be sent to the USDA Citrus Canker Eradication Project, Attn: Lost Production Payments Program, c/o Division of Plant Industry, 3027 Lake Alfred Road, Winter Haven, FL 33881. Claims for losses attributable to the destruction of trees on or before [the effective date of this rule] must be received within 60 days after [the effective date of this rule]. Claims for losses attributable to the destruction of trees after [the effective date of this rule] must be received within 60 days after the destruction of the trees.

Done in Washington, DC, this 1st day of December 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–31142 Filed 12–4–00; 11:17 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 208

[INS No. 2092–00; AG Order No. 2339–2000]

RIN 1115–AF92

Asylum and Withholding Definitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations that govern establishing asylum and withholding eligibility. This rule provides guidance on the definitions of ''persecution'' and ''membership in a particular social group,'' as well as what it means for persecution to be ''on account of'' a protected characteristic in the definition of a refugee. It restates that gender can form the basis of a particular social group. It also establishes principles for interpretation and application of the various components of the statutory definition of ''refugee'' for asylum and withholding cases generally, and, in particular, will aid in the assessment of claims made by applicants who have suffered or fear domestic violence. The Service believes these issues require further examination after the Board of Immigration Appeals (Board) decision in *In re R–A–,* Interim Decision 3403 (BIA 1999). Further, the rule clarifies that the factors considered in cases in the Court of Appeals for the Ninth Circuit regarding membership in a particular social group are not determinative. Finally, the rule clarifies procedural handling of asylum and withholding claims in which past persecution has been established. This proposed rule has been prepared and is published in conjunction with the final rule on asylum procedures, which incorporates both the interim rule amending the Department of Justice (Department) regulations to implement the Illegal Immigration Reform and Immigrant Responsibility Act, 62 FR 10312 (1997), and the proposed past persecution rule, 63 FR 31945 (1998).

DATES: Written comments must be submitted on or before January 22, 2001.

ADDRESSES: Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2092–00 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Dorothea Lay, 425 I Street, NW, Washington, D.C. 20536, telephone number (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this rule is to provide guidance on certain issues that have arisen in the context of asylum and withholding adjudications. The 1951 Geneva Convention relating to the Status of Refugees (1951 Convention) contains the internationally accepted definition of a refugee. United States immigration law incorporates an almost identical definition of a refugee as a person outside his or her country of origin ''who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality,

membership in a particular social group, or political opinion.'' Section 101(a)(42) of the Immigration and Nationality Act (Act) (8 U.S.C. 1101(a)(42)). (The definition was amended by section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009, to include a provision on coercive family planning practices.) In order to establish eligibility for a discretionary grant of asylum under section 208 of the Act, 8 U.S.C. 1158, an alien must meet the definition of ''refugee'' under section 101(a)(42) of the Act. To qualify for withholding of removal under section 241(b)(3) of the Act, an alien must meet a higher burden of proof: That it is more likely than not that the alien would be persecuted on account of one of the five grounds listed within the definition of ''refugee.'' 8 U.S.C. 1231.

A sizable body of interpretive case law has developed about the meaning of the refugee definition. Historically, much of this case law has addressed more traditional asylum and withholding claims based on an applicant's political opinion. In recent years, however, the United States increasingly has encountered asylum and withholding applications with more varied bases, related, for example, to an applicant's gender or sexual orientation. Many of these new types of claims are based on the ground of ''membership in a particular social group,'' which is the least well-defined of the five grounds within the refugee definition. As the Court of Appeals for the Seventh Circuit noted in *Lwin* v. *INS,* ''[t]he legislative history behind the term * * * is uninformative, and judicial and agency interpretations are vague and sometimes divergent. As a result, courts have applied the term reluctantly and inconsistently.'' 144 F.3d 505, 510 (7th Cir. 1998).

Some of these cases have raised difficult analytical questions about the interpretation of the refugee definition, questions that have not always been addressed consistently through the administrative adjudication and judicial review process. This rule sets out a number of generally applicable principles to promote uniform interpretation of the relevant statutory provisions. Though applicable to all asylum and withholding cases, these principles are also designed to provide guidance for the resolution of novel issues in some of the asylum and withholding claims that the Department has encountered in recent years.

One of these novel issues is the extent to which victims of domestic violence may be considered to have been persecuted under the asylum laws. The Board considered and rejected such a persecution claim in its decision in *In re R-A-.* This proposed rule removes certain barriers that the *In re R-A-* decision seems to pose to claims that domestic violence, against which a government is either unwilling or unable to provide protection, rises to the level of persecution of a person on account of membership in a particular social group. The proposed rule does not specify how a claim of persecution based on domestic violence should be fashioned—in particular, it does not set forth what the precise characteristics of the particular social group might be. The Department has taken this approach in part because it recognizes that the way in which a victim of domestic violence who believes she has been persecuted may characterize the particular social group of which she is a member likely will vary depending upon the social context in her country. The Department also recognizes that whether domestic violence can be so characterized in a given case will turn on difficult and subtle evaluations of particular facts. Given these realities, it seems ill-advised to try to establish a universal model for persecution claims based on domestic violence. The Department has instead decided to propose a rule that states generally applicable principles that will allow for case-by-case adjudication of claims based on domestic violence or other serious harm inflicted by individual non-state actors.

The Department solicits comments both on the questions that we have left open and on whether the Department should seek to provide more direct guidance to adjudicators and the public on their resolution. We expect the questions addressed during the comment period would include: How persecution claims based on domestic violence might be conceptualized and evaluated within the framework of asylum law; how asylum officers, immigration judges, and the Board should determine whether a particular victim of domestic violence (or other acts of persecution by an individual non-state actor) has suffered this treatment ''on account of'' membership in a particular social group (*e.g.,* gender or status of being in a domestic relationship); and whether, in view of the fact that claims based on harm inflicted by individual non-state actors are relatively new in the United States, such claims raise distinct issues concerning statutory eligibility or the exercise of discretion in granting asylum.

The Meaning of Persecution

A fundamental question in any asylum or withholding adjudication is whether the harm that an applicant has suffered or fears amounts to persecution. Neither the 1951 Convention nor the Refugee Act of 1980 defines ''persecution.'' Two years before enacting the Refugee Act, Congress specifically debated whether to include a definition of ''persecution'' in the Act in the related context of a bill that eventually added the deportation ground aimed at Nazi persecutors (now section 241(a)(4)(D) of the Act). Congress rejected adding a definition of ''persecution'' to the immigration laws, concluding that the meaning of the term was well-established by administrative and court decisions and meant ''the infliction of suffering or harm, under government sanction, upon persons who differ in a way regarded as offensive (*e.g.,* race, religion, political opinion, etc.), in a manner condemned by civilized governments. The harm or suffering need not be physical, but may take other forms, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life.'' H.R. Rep. 95–1452 at 5 (1978).

The Board adopted this meaning as well. *Matter of Acosta,* 19 I. & N. Dec. 211, 220 (BIA 1985), *modified on other grounds, Matter of Mogharrabi,* 19 I. & N. Dec. 439 (BIA 1987). The courts, too, generally have accepted this definition, describing ''persecution'' as '' 'the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.'' ' *Duarte de Guinac* v. *INS,* 179 F.3d 1156, 1161 (9th Cir. 1999) (quoting *Korablina* v. *INS,* 158 F.3d 1038, 1043 (9th Cir. 1998)); *accord Miranda* v. *INS,* 139 F.3d 624, 626 (8th Cir. 1998); *Fisher* v. *INS,* 79 F.3d 955, 961 (9th Cir. 1996) (en banc); *Abdel-Maieh* v. *INS,* 73 F.3d 579, 583 (5th Cir. 1996); *Schellong* v. *INS,* 805 F.2d 655, 661–62 (7th Cir. 1986). This definition recognizes that ''persecution is an extreme concept that does not include every sort of treatment our society regards as offensive.'' *Fatin* v. *INS,* 12 F.3d 1233, 1243 (3d Cir. 1993); *see also Bastanipour* v. *INS,* 980 F.2d 1129, 1133 (7th Cir. 1992) (distinguishing persecution ''as distinct from mere discrimination or harassment''). These cases sometimes defined ''persecution'' as including other, separate elements of the ''refugee'' definition, such as the requirement that the persecution be ''on account of'' a protected characteristic. This rule is intended to provide

guidance on the meaning of persecution, to clarify that persecution includes objective and subjective components, as well as an analysis of state action or state inability or unwillingness to protect.

It has sometimes been suggested that persecution entails a subjective intent on the part of the persecutor to ''inflict harm'' or ''punish'' the victim. In *Matter of Acosta*, the Board found that, to be persecution, the harm or suffering must be inflicted upon an individual in order to punish. Some circuits have followed this early approach to defining persecution. *See*, *e.g.*, *Osaghae* v. *INS*, 942 F.2d 1160, 1163 (7th Cir. 1991) (''`Persecution' means, in immigration law, punishment for political, religious, or other reasons that our country does not recognize as legitimate.''). Certainly, in more traditional claims involving political persecution, such a ''punitive'' or ''malignant'' intent to visit harm upon the victim is usually present. In recent years, however, applicants have successfully presented novel claims in which the claimed persecution is not necessarily inflicted with the subjective intent to cause harm. In 1996, for example, the Board decided that a young woman from Togo qualified for asylum based on her fear of being subjected to female genital mutilation (FGM). *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996) (*en banc*). This case squarely raised the question whether a subjective intent to harm the victim is a necessary component of an asylum or withholding claim, because, presumably, most practitioners of FGM believe that they are performing an important cultural rite that bonds the individual to society, not that they are punishing or harming the victim. In *Matter of Kasinga*, the Board held that a ''subjective `punitive' or `malignant' intent is not required for harm to constitute persecution.'' *Id.* at 365.

In its 1997 decision in *Pitcherskaia* v. *INS*, 118 F.3d 641 (9th Cir. 1997), the Ninth Circuit further advanced this concept. In that case, a lesbian woman claimed that she had been forced to undergo psychiatric treatments and threatened with institutionalization in the 1980s by officials of the Soviet Union in an effort to change her sexual orientation. The Board held that the psychiatric measures taken by the officials did not constitute persecution because they were intended to ''cure'' her, not to punish her. On review, the Ninth Circuit reversed this portion of the Board's decision, and remanded the case for further consideration of other aspects of the case.[1] The Ninth Circuit, citing *Matter of Kasinga*, decided by the Board after the Board's decision in *Pitcherskaia*, concluded that an intent to harm or punish is not required for persecution to exist, and that the ''definition of persecution is objective, in that it turns not on the subjective intent of the persecutor but rather on what a reasonable person would deem `offensive.' '' *Pitcherskaia*, 118 F.3d at 646.

This rule addresses the definition of persecution by clarifying that it includes both objective and subjective elements. First, the proposed rule defines persecution in § 208.15(a) as ''the infliction of objectively serious harm or suffering.'' This general definition does not diminish the level of harm that has been recognized by the Board and generally sustained by the Courts of Appeals as sufficiently serious to constitute persecution. The definition does not preclude reference to other sources for guidance on what type of harm can constitute persecution. *See*, *e.g.*, United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook), para. 51 (re-edited 1992) (''From Article 33 of the 1951 Convention it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights—for the same reasons—would also constitute persecution.''). This proposed language in § 208.15(a), consistent with the Ninth Circuit's approach in *Pitcherskaia*, imposes an objective standard on the concept of persecution by requiring that the harm must be recognizable as serious harm. Generally, persecution cannot be established simply upon a showing of discrimination, harassment, or the denial of equal protection of the laws. Guided by existing case law, the decision-maker will deduce from the nature of the claim whether or not the harm is serious enough to constitute persecution.

The proposed language also provides that harm is persecution only if it is ''experienced as serious harm by the applicant, regardless of whether the persecutor intends to cause harm.'' The Department believes that it is appropriate to codify an interpretation that is drawn from the conclusion reached by both the Board in *Kasinga* and the Ninth Circuit in *Pitcherskaia:* that the existence of persecution does not require a ''malignant'' or ''punitive'' intent on the part of the persecutor. At the same time, the Department believes that it is necessary to emphasize that the victim must experience the treatment as harm in order for persecution to exist. For example, there are many women from cultures that practice FGM who view the process positively and believe that they are acting in the victim's best interests, even as the victim experiences the action as harmful. For the purpose of asylum and withholding adjudications, a key question is whether the applicant at hand would experience or has experienced the procedure as serious harm, not whether the perpetrator means it as punitive. Generally, an applicant's own testimony would be the best evidence in determining whether that applicant subjectively experienced or would experience the treatment as harm.

State Action Requirement

Inherent in the meaning of persecution is the long-standing principle that the harm or suffering that an applicant experienced or fears must be inflicted by either the government of the country where the applicant fears persecution, or a person or group that government is unable or unwilling to control. *See*, *e.g.*, *Matter of Villalta*, 20 I. & N. Dec. 142, 147 (BIA 1990); *Matter of H–*, 21 I. & N. Dec. 337 (BIA 1996); *Matter of Kasinga*, *supra*; *Matter of Acosta*, *supra.* This is also consistent with the understanding of Congress two years before the Refugee Act was passed that ''persecution'' is ''the infliction of suffering or harm, under government sanction,'' H.R. Rep. 95–1452 at 5, and with the position of UNHCR and Convention-based interpretations of the meaning of persecution. *See* UNHCR Handbook, para. 65.[2]

U.S. court and administrative decisions have looked to a variety of factors in considering the requirement that an applicant must show that the harm or suffering is inflicted by the government or a person or group the government is ''unable or unwilling to control.'' Courts have concluded the government is ''unable or unwilling to

[1] *Pitcherskaia* was remanded to the immigration court, where the case is currently pending.

[2] ''Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.''

control'' the infliction of harm or suffering if the applicant has shown a pattern of government unresponsiveness. *See Mgoian* v. *INS*, 184 F.3d 1029, 1036–37 (9th Cir. 1999). Both courts and the Board have also looked to whether an applicant has shown government complicity in the face of persecution. *See Korablina*, 158 F.3d at 1045. Courts have often considered the applicant's attempts to obtain protection from government officials and the government response or lack thereof. *See Surita* v. *INS*, 95 F.3d 814, 819–20 (9th Cir. 1996) (finding persecution where the police refused to respond to the applicant's request for assistance or provide a reasonable explanation for their failure to respond); *Singh* v. *INS*, 134 F.3d 962, 968 (9th Cir. 1998) (holding that the applicant failed to establish persecution, in part because the police responded to her call even though police took no further action). In the recent case of *In re S–A–,* Interim Decision 3433 (BIA 2000), the Board considered the applicant's testimony and country conditions information in concluding that any attempts by the applicant to seek protection would be futile and potentially dangerous. Other Board decisions illustrate the relevance of government responses to persecution by non-state actors. *See*, *e.g.*, *Matter of V–T–S–*, 21 I. & N. Dec. 792 (holding that the record did not support claim that the government was unable or unwilling to protect when evidence indicated that the government mounted massive rescue efforts to find kidnapped family members); *In re O–Z– & I–Z–*, Interim Decision 3346 (BIA 1998) (finding that the government was unable or unwilling to control the respondent's attackers and protect him or his son from the anti-Semitic acts of violence when the respondent reported at least three incidents of harm to the Ukrainian government, which took no action beyond writing a report). The UNHCR Handbook emphasizes that the inability to seek government protection may arise from circumstances beyond the applicant's control, such as grave disruptions within the country, or may result from a denial of protection to the applicant. UNHCR Handbook, para. 98. When assessing whether a government has denied protection, one factor to consider is whether the applicant has been denied services (*e.g.*, refusal of a national passport) normally accorded to other nationals of that country. UNHCR Handbook, para. 99.

Section 208.15(a)(1) of this rule provides further guidance as to what is meant by the state action requirement and, specifically, the requirement that the government be ''unable or unwilling to control'' non-government persecutors. The proposed rule states that ''[i]n evaluating whether a government is unwilling or unable to control the infliction of harm or suffering, the immigration judge or asylum officer should consider whether the government takes reasonable steps to control the infliction of harm or suffering and whether the applicant has reasonable access to the state protection that exists.'' The rule goes on to provide a non-exclusive list of evidentiary considerations that may be considered as helpful in determining whether a government is ''unable or unwilling'' to control the non-state actor. This new language codifies existing administrative interpretations and provides further guidance on this relatively undeveloped area of the law. This proposed list of evidentiary considerations is not intended to change the law, but merely to illustrate what types of evidence may be relevant in evaluating whether a government is unable or unwilling to control the infliction of suffering or harm. Of course, no government is able to guarantee the safety of each of its citizens at all times. This is not the standard for determining that a government is ''unable or unwilling to control'' the infliction of harm or suffering. *See, e.g., Aguilar-Solis* v. *INS,* 168 F.3d 565, 573 (1st Cir. 1999) (''Although action by non-governmental entities can constitute persecution, the law requires at least some showing that the alleged persecutors are not subject to the government's control.'') (citations omitted). Rather, the decision-maker should consider the government's policies with respect to the harm or suffering at issue, and what steps, if any, the government has taken to prevent the infliction of such harm or suffering. In addition, the decision-maker should consider what kind of access the individual applicant has to whatever protection is available, and any steps the applicant has taken to seek such protection. Any attempts by an applicant to seek protection within the country of persecution are relevant but are not determinative of the state's inability or unwillingness to control the infliction of suffering or harm. An applicant's failure to attempt to gain access to protection is not in itself determinative of the state's inability or unwillingness to control nor does this failure bar an applicant from establishing by other evidence the state's inability or unwillingness to control the infliction of suffering or harm. The adequacy of access to protection may vary within a given society depending on the individual applicant's circumstances and general country conditions. For example, in some countries, there generally may be reasonable access to state protection, but an applicant's access to such protection may be limited if the persecutor is influential with government officials. As another example, in some countries a female victim of spousal abuse may be able to obtain state protection if she has the support of her family of origin in seeking it, but her access to such protection may be more limited without such support. In each case, all factors relevant to the availability of and access to state protection should be examined in determining whether the government of the country in question is unwilling or unable to protect the applicant from a non-state persecutor. It is the applicant's burden to come forward with the evidence that the harm or suffering is inflicted by the government, or an entity that the government is unable or unwilling to control.

The ''on account of'' Requirement in General

Even if it is determined that the harm an applicant has suffered or fears may constitute persecution, the applicant may qualify for asylum or withholding only if that persecution is inflicted ''on account of'' the applicant's race, religion, nationality, membership in a particular social group, or political opinion. The Supreme Court has held that, in order for persecution to be ''on account of'' one of these protected grounds, there must be evidence that the persecutor seeks to harm the victim on account of the victim's possession of the characteristic at issue. *INS* v. *Elias-Zacarias,* 502 U.S. 478, 482 (1992). As administrative decision-makers and the courts have applied this test to individual cases, the determination about when persecution is inflicted ''on account of'' a protected ground has raised difficult interpretive issues. This rule provides guidance on several of these issues.

Under long-standing principles of U.S. refugee law, it is not necessary for an applicant to show that his or her possession of a protected characteristic is the sole reason that the persecutor seeks to harm him or her. Both the Board and the federal courts have recognized that a persecutor may have mixed motivations, and have stated that the ''on account of'' requirement is satisfied if the persecutor acts ''at least in part'' because of a protected characteristic. *See, e.g., Matter of T–M–B–,* 21 I. & N. Dec. 775 (BIA 1997), *overruled on other grounds sub nom.*

Borja v. *INS,* 175 F.3d 732 (9th Cir. 1999) (*en banc*). Some court decisions provide conflicting interpretations of the extent to which the persecutor's motivation must relate to a protected characteristic. *Compare Singh* v. *Ilchert,* 63 F.3d 1501, 1509 (9th Cir. 1995) (''[T]he BIA failed to recognize that persecutory conduct may have more than one motive, and so long as one motive is one of the statutorily enumerated grounds, the requirements have been satisfied.''); *with Gebremichael* v. *INS,* 10 F.3d 28, 35 (1st Cir. 1993) (alien must show that one of the five characteristics is ''at the root of persecution, such that [the characteristic] itself generates a 'specific threat to the [applicant]'') (internal quotations and citation omitted). This rule proposes new language at § 208.15(b) that would require an applicant to show that the protected characteristic is central to the persecutor's motivation to act. Consistent with current law, this language allows for the possibility that a persecutor may have mixed motives. It does not require that the persecutor be motivated solely by the victim's possession of a protected characteristic. It does, however, require that the victim's protected characteristic be central to the persecutor's decision to act against the victim. For example, under this definition it clearly would not be sufficient if the protected characteristic was incidental or tangential to the persecutor's motivation.

A refugee is traditionally an individual as to whom the bonds of trust, loyalty, protection, and assistance existing between a citizen and his country have been broken and have been replaced by the relationship of an oppressor to a victim. Inherent in the concept of refugee status is the principle that an individual requires international protection because his country of origin or of habitual residence is not safe for him, or cannot protect him, because of persecution on account of one of the five grounds specified in the definition of ''refugee.'' *See, e.g., Matter of Acosta,* 19 I. & N. Dec. at 234–35; 1 A. Grahl-Madsen, *The Status of Refugees In International Law* 97, 100 (1966). The proposed language that the protected characteristic of the refugee be central to the persecutor's motivation is thus supported by the purposes of the 1951 Convention.

The proposed language also incorporates the doctrine of ''imputed political opinion'' into the regulation. Under this doctrine, an applicant may establish persecution on account of political opinion if he or she can show that the persecutor was or is inclined to persecute because the persecutor perceives the applicant to possess a particular political opinion, even if the applicant does not in fact possess such an opinion. *See, e.g., Sangha* v. *INS,* 103 F.3d 1482, 1489 (9th Cir. 1997). The proposed language provides that an applicant may satisfy the ''on account of'' requirement by showing that the persecutor acts against him or her ''on account of the applicant's race, religion, nationality, membership in a particular social group, or political opinion, or on account of what the persecutor perceives to be the applicant's race, religion, nationality, membership in a particular social group, or political opinion.'' Thus, this language codifies the existing doctrine of imputed political opinion, as well as the existing administrative interpretation that this doctrine also extends to the protected grounds other than political opinion.

In re R–A–

The proposed new language in § 208.15(b) is intended to address analytical issues that have arisen in the context of some claims based on domestic violence, and in particular in the Board's decision in *In re R–A–,* Interim Decision 3403 (BIA 1999). In that case, the Board denied asylum to a Guatemalan woman who had been the victim of severe domestic violence by her husband in Guatemala and who feared that she would be at risk of continuing violence if she returned there. Certain elements of the Board's analysis in this case affect the ''on account of'' inquiry in asylum and withholding cases in general, and the ''particular social group'' cases especially. This rule sets forth a modified statement of the principles governing the ''on account of'' inquiry.

The applicant in *In re R–A–* presented alternative claims of persecution on account of political opinion (the applicant's opposition to male domination) and on account of membership in a particular social group (defined as ''Guatemalan women who have been intimately involved with Guatemalan male companions, who believe that women are to live under male domination''). *Id.* at 10–14. The Board found that the applicant's husband did not seek to harm her either on account of her political opinion or on account of her membership in a particular social group. *Id.* at 14.

The Board's analysis of the political opinion claim is consistent with long-standing principles of asylum law and is not altered by this rule. The Board reasoned that the abuse in this case was not on account of the applicant's political opinion because there was no evidence that the applicant's husband was aware of the applicant's opposition to male dominance, or even that he cared what her opinions on this matter were. Rather, he continued to abuse her regardless of what she said or did. *Id.* at 13–14. This portion of the decision is consistent with the Supreme Court's reasoning in *Elias-Zacarias*, *supra*, and with the Board's own precedent that harm is not on account of political opinion when it is inflicted *regardless* of the victim's opinion rather than *because* of that opinion. *See Matter of Chang*, 20 I. & N. Dec. 38, 44–45 (BIA 1989), superceded on other grounds, *Matter of X–P–T–*, 21 I. & N. Dec. 634 (BIA 1996).

The Board's particular social group analysis in *In re R–A–,* however, requires some clarification. The Board found that the violence in this case was not ''on account of'' the applicant's membership in the particular social group asserted—essentially Guatemalan women intimately involved with abusive Guatemalan men.[3] *Id.* at 17. The Service argued, and the Board agreed, that there was no indication that the applicant's husband would harm any other member of the asserted particular social group. In other words, there was no evidence that he would seek to harm other women who live with other abusive partners. *Id.* This was an important factor in the Board's decision that the harm in that case was not on account of membership in a particular social group. The Board did consider other factors in reaching its conclusion that no nexus had been shown between the husband's violence and the claimed particular social group. However, the Board's reasoning on this point could be construed to foreclose the possibility of satisfying the ''on account of'' requirement when the persecutor does not seek to harm other members of the asserted particular social group.

As an evidentiary matter, it often would be reasonable to expect that a person who is motivated to harm a victim because of a characteristic the victim shares with others would be prone to harm or threaten others who share the targeted characteristic. Such a showing should not necessarily be required as a matter of law, however, in order for an applicant to satisfy the ''on account of'' requirement. In some cases, a persecutor may in fact target an individual victim because of a shared characteristic, even though the persecutor does not act against others

[3] To the extent that the asserted particular social group in *In re R–A–* could be interpreted to have been defined by the persecution feared, this rule clarifies below that a social group must exist independently of the feared persecution.

who possess the same characteristic. For example, in a society in which members of one race hold members of another race in slavery, that society may expect that a slave owner who beats his own slave would not beat the slave of his neighbor. It would nevertheless be reasonable to conclude that the beating is centrally motivated by the victim's race. Similarly, in some cases involving domestic violence, an applicant may be able to establish that the abuser is motivated to harm her because of her gender or because of her status in a domestic relationship. This may be a characteristic that she shares with other women in her society, some of whom are also at risk of harm from their partners on account of this shared characteristic. Thus, it may be possible in some cases for a victim of domestic violence to satisfy the ''on account of'' requirement, even though social limitations and other factors result in the abuser having the opportunity, and indeed the motivation, to harm only one of the women who share this characteristic, because only one of these women is in a domestic relationship with the abuser.

To allow for this possibility, this rule provides that, when evaluating whether an applicant has met his or her burden of proof to establish that the harm he or she suffered or fears is ''on account of'' a protected characteristic, ''[b]oth direct and circumstantial evidence may be relevant to the inquiry.'' The rule further provides that ''[e]vidence that the persecutor seeks to act against other individuals who share the applicant's protected characteristic is relevant and may be considered but shall not be required.''

In every asylum or withholding case, of course, it remains the applicant's burden to establish that the specific persecutor involved in her claim is motivated to act against her because of her possession or perceived possession of a protected characteristic. As this rule underscores, both direct and circumstantial evidence may be relevant to this determination. As in any asylum or withholding case, evidence about the persecutor's statements and actions will be considered. In addition, evidence about patterns of violence in the society against individuals similarly situated to the applicant may also be relevant to the ''on account of'' determination. For example, in the domestic violence context, an adjudicator would consider any evidence that the abuser uses violence to enforce power and control over the applicant because of the social status that a woman may acquire when she enters into a domestic relationship. This would include any direct evidence about the abuser's own actions, as well as any circumstantial evidence that such patterns of violence are (1) supported by the legal system or social norms in the country in question, and (2) reflect a prevalent belief within society, or within relevant segments of society, that cannot be deduced simply by evidence of random acts within that society. Such circumstantial evidence, in addition to direct evidence regarding the abuser's statements or actions, would be relevant to determining whether the abuser believes he has the authority to abuse and control the victim ''on account of'' her status in the relationship.

Further, a claim involving domestic violence in which the applicant has satisfied the ''on account of'' requirement remains subject to the full range of generally applicable requirements under the asylum and withholding laws. For example, as in any other case, the fear of future abuse cannot be speculative, it must be ''well-founded.'' A woman who is not in an abusive relationship, for example, would not have a ''well-founded'' fear of domestic violence even if there is a high incidence of domestic violence in her country of origin. The harm feared must be serious enough to constitute persecution; isolated incidents of discrimination or lesser forms of harm would not qualify as persecution. As in any asylum or withholding case in which the persecutor is not the state itself, the applicant would have to show that the state is unwilling or unable to protect her. Generally, an applicant's claim based on domestic violence will rest on personal experiences not addressed in general country conditions information. General country conditions information may, however, support such a claim. The applicant should come forward with testimony regarding her personal experience, and, if available, documentary evidence relating to her claim.

This rule will also affect the analysis of asylum or withholding claims made by alleged abusers. A perpetrator of domestic violence serious enough to be persecution, who has abused the victim because of the victim's membership in a particular social group, would be barred from seeking asylum under section 101(a)(42) of the Act. 8 U.S.C. 1101(a)(42). The Service will consider ways to identify these individuals. Of course, if removable, these individuals would normally be entitled to a full hearing prior to removal, during which all evidence relevant to eligibility could be presented and considered. This will allow the government to protect our asylees and residents against persecutors.

Membership in a Particular Social Group

Once an applicant has established that the harm he or she has suffered or fears is ''on account of'' the characteristic asserted, the applicant must establish that the characteristic qualifies as race, religion, nationality, membership in a particular social group, or political opinion. Membership in a particular social group is perhaps the most complex and difficult to understand of these five grounds. There is relatively little precedent about the meaning of ''a particular social group,'' and that which exists has at times been subject to conflicting interpretations. This rule sets out the requirements for determining what qualifies as ''a particular social group,'' clarifies the relevance of past experience, and provides a list of non-determinative factors to be considered.

The key Board decision on the meaning of ''a particular social group'' requires that members of the group share a ''common, immutable'' trait. *Matter of Acosta,* 19 I. & N. Dec. at 233. This rule codifies this basic approach at § 208.15(C)(1), by providing that ''[a] particular social group is composed of members who share a common, immutable characteristic, such as sex, color, kinship ties, or past experience, that a member either cannot change or that is so fundamental to the identity or conscience of the member that he or she should not be required to change it.'' The crucial aspect of this definition is that, to be immutable, the common trait must be unchangeable or truly fundamental to an applicant's identity. Gender is clearly such an immutable trait, is listed as such in *Matter of Acosta,* and is incorporated in this rule. Further, there may be circumstances in which an applicant's marital status could be considered immutable. This would be the case, for example, if a woman could not reasonably be expected to divorce because of religious, cultural, or legal constraints. Any intimate relationship, including marriage, could also be immutable if the evidence indicates that the relationship is one that the victim could not reasonably be expected to leave. Thus, this rule further provides in § 208.15(C)(1) that ''[i]n determining whether an applicant cannot change, or should not be expected to change, the shared characteristic, all relevant evidence should be considered, including the applicant's individual circumstances and country conditions information about the applicant's society.''

This rule also includes the principle that the particular social group in which an applicant claims membership cannot be defined by the harm which the applicant claims as persecution. It is well-established in the case law that this type of circular reasoning does not suffice to articulate a particular social group. *See Gomez* v. *INS,* 947 F.2d 660, 664 (2d Cir. 1991) (rejecting the applicant's claim to membership in a particular social group of women who have been previously battered and raped by Salvadoran guerrillas). It is also supported by Convention-based understandings of the definition of membership in a particular social group. *See, e.g., Islam* v. *Secretary of State for the Home Department,* 2 App. Cas. 629 (H.L. 1999) (United Kingdom) (''It is common ground that there is a general principle that there can only be a 'particular social group' if the group exists independently of the persecution'') (Lord Steyn).

Proposed § 208.15(c)(2) provides that, ''[w]hen past experience defines a particular social group, the past experience must be an experience that, at the time it occurred, the member either could not have changed or was so fundamental to his or her identity or conscience that he or she should not have been required to change it.'' This is consistent with current case law that recognizes that past experiences can be the basis for membership in a particular social group. *See Matter of Fuentes,* 19 I. & N. Dec. 658, 662 (BIA 1988). The regulatory language preserves the key requirement from *Matter of Acosta, supra,* that the trait defining a particular social group must be a fundamental one, which an individual should not be required to change. In reality, of course, no past experience can be changed, as it has already occurred. But not all past experiences should qualify as traits which, if shared by others, can define a particular social group for asylum and withholding purposes. The experience of joining a violent gang in the past, for example, cannot be changed. At that point in the past, however, that experience could have been avoided or changed. In other words, the individual could have refrained from joining the group. Certainly, it is reasonable for any society to require its members to refrain from certain forms of illegal activity. Thus, for example, under this language, persons who share the past experience of having joined a gang would not constitute a particular social group on the basis of a past experience.

The requirement in § 208.15(C)(1) that the persecution exist independently of the harm is equally applicable to claims of membership in a particular social group based on past experience. At least in theory, a shared past experience that defines a social group could be harm suffered by the applicant and other group members in the past. In such a claim however, the past harm that defines the social group cannot be the same harm that the applicant claims as persecution. Rather, in order for persecution to be ''on account of'' membership in such a group, the past experience must exist independently of the persecution. In fact, the past experience must be the reason the persecutor inflicted or is inclined to inflict the persecution on the applicant.

Finally, the proposed language in § 208.15(C)(3) provides a non-exclusive list of additional factors that may be considered in determining whether a particular social group exists. These factors are drawn from existing administrative and judicial precedent on the meaning of the ''particular social group'' ground. These precedents have been subject to conflicting interpretations, however, and this provision resolves those ambiguities by providing that, while these factors may be relevant in some cases, they are not requirements for the existence of a particular social group.

The first three factors in this section are drawn from the Ninth Circuit's decision in *Sanchez-Trujillo* v. *INS,* 801 F.2d 1571 (9th Cir. 1986). In that case, the Ninth Circuit stated that ''the phrase 'particular social group' implies a collection of people closely affiliated with each other, who are actuated by some common impulse or interest,'' *id.* at 1576, and that ''[o]f central concern is the existence of a voluntary associational relationship among the purported members,'' *id.* These factors have often been interpreted as prerequisites for the existence of a particular social group in the Ninth Circuit. The Ninth Circuit clarified the significance of these factors in the recent case of *Hernandez-Montiel* v. *INS,* 225 F.3d 1084 (9th Cir. 2000). The court held that its decision in *Sanchez-Trujillo* should be interpreted as consistent with the Board's decision in *Matter of Acosta* and that the voluntary associational test is an alternative basis for establishing membership in a particular social group. *See* 225 F.3d at 1093 n.6. Other circuits have not applied this factor, and, instead have simply relied on the Board's determination that the group must share a ''common, immutable'' characteristic. *See, e.g., Fatin* v. *INS,* 12 F.3d 1233, 1239 (3d Cir. 1993) (quoting *Matter of Acosta,* 19 I. & N. Dec. at 233). In cases arising outside the Ninth Circuit, the Board has decided that a particular social group may exist without reference to these factors. *See, e.g., Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 820–21 (BIA 1990) (Cuban homosexuals are a particular social group); *Matter of Kasinga,* 21 I. & N. Dec. at 365 (young women who belong to a specific Togolese tribe and who oppose FGM are a particular social group). To ensure uniform and fair administrative adjudications of particular social group asylum claims, this rule clarifies that the Department views the *Sanchez-Trujillo* factors as considerations that may be relevant in some cases, but not as requirements for a particular social group.

Similarly, the next three factors in this proposed section are drawn from the Board's decision in *In re R-A-.* In that case, the Board found it highly significant for ''particular social group'' analysis that the applicant had not shown that the group she asserted ''is a group that is recognized and understood to be a societal faction, or is otherwise a recognized segment of the population, within Guatemala,'' or that ''the victims of spouse abuse view themselves as members of this group.'' *Id.* at 15. The Board also focused on whether ''it is more likely that distinctions will be drawn within the society between those who share and those who do not share the characteristic'' at issue. *Id.* at 16. This, of course, could be an important inquiry in asylum and withholding cases. The Board did not characterize these elements as requirements, however. This rule incorporates them as factors, but confirms that they are considerations, which, while they may be relevant in some cases, are not determinative of the question of whether a particular social group exists.

In applying the factor at § 208.15(c)(3)(vi)—whether members of a given group are distinguished for different treatment—it would be relevant to consider any evidence about societal attitudes toward group members or about harm to group members, including whether the institutions of the society at hand offer fewer protections or benefits to members of the group than to other members of society. In *In re R-A-*, for example, evidence presented that would be relevant to this inquiry included the applicant's testimony that the police did not respond to her calls for help, and that, when she appeared before a judge, he told her that he would not interfere in domestic disputes. Further, the Board's conclusion that documentary country conditions evidence indicates that ''Guatemalan society still tends to view domestic violence as a family problem'' would also be relevant. This type of evidence

may be considered in determining whether, because the applicant possesses a particular characteristic, harm inflicted on the applicant may be tolerated by society while it would not be tolerated if inflicted on members of the society at large.

The Department has elected at this point to propose that the relationship of *In re R-A-* and domestic violence claims to the definition of ''refugee'' be addressed by articulating broadly applicable principles to guide adjudicators in applying the refugee definition and other statutory and regulatory provisions generally. The Department has tentatively concluded that this approach would be more useful than simply announcing a categorical rule that a victim of domestic violence is or can be a refugee on account of that experience or fear, or that persons presenting such claims may be found eligible for relief or granted relief as a matter of discretion in certain specified circumstances. The current proposal of the Department would encourage development of the law in the area of domestic violence as well as in other new claims that may arise. Asylum and withholding cases are typically highly fact specific. A case-by-case approach would reflect that reality, and would also leave the refinement of applicable principles open to further development. The Department is nonetheless seeking comments on the relative merits of this approach, and other possible approaches, to providing for consideration of domestic violence claims as a basis for asylum and withholding of removal.

This rule does not modify the definition of ''firm resettlement.'' The rule merely changes its placement to § 208.15(d) of the regulations.

Burden of Proof

Under U.S. law, a showing of past persecution qualifies an applicant for refugee status. Section 101(a)(42) of the Act, (8 U.S.C. 1101(a)(42)). A showing of past persecution is also strongly indicative of the possibility of future harm. Under the current regulations as modified by the final rule on asylum procedures published in conjunction with this rule, a presumption of well-founded fear applies to applicants who qualify as refugees based on past persecution. The presumption places the burden on the U.S. government to show by a preponderance of the evidence that a refugee no longer has a well-founded fear of future persecution. The Department believes that this allocation of the burden generally is appropriate in light of the applicant's refugee status.

The final rule on asylum procedures published in conjunction with this rule broadens the evidence with which the government can rebut the presumption of well-founded fear. The presumption can be rebutted by evidence of a fundamental change in circumstances, including country conditions information, or a showing of a reasonable internal relocation alternative. The Department recognizes that some cases involving past persecution by non-government persecutors may present questions about whether the presumption of a well-founded fear of future persecution is appropriate. For example, to some commenters, the presumption of internal relocation may seem less warranted in cases involving non-government actors, or especially in those cases involving individual non-government actors, for which there may be more reason to believe that the victim could relocate. Some commenters may believe that certain types of individual non-government actor cases warrant a presumption more than others and should therefore be treated differently.

The Violence Against Women Office of the Department of Justice has offered the following observations about domestic violence, based on its experience in the U.S. as well as with foreign governments and non-governmental organizations:

> It is our experience that domestic violence manifests similar characteristics across all racial, ethnic and socioeconomic groups, and that many cultures have a variety of ways in which they condone and perpetuate domestic violence. *See, e.g.,* Lori J. Heise, Violence Against Women: The Hidden Health Burden (World Bank Discussion Papers 1994); Ending Violence Against Women, 27 Population Reports 5 (Johns Hopkins School of Public Health, Dec. 1999) (summarizing surveys from many countries discussing domestic violence). *See generally* H.R. Rep. 103–395, at 25–28 (1993) (congressional findings of fact about domestic violence). First, in relationships involving domestic violence, past behavior is a strong predictor of future behavior by the abuser. *See, e.g.,* United States Department of Justice, Understanding Domestic Violence: A handbook for Victims and Professionals. Victims report patterns of abuse—rather than single, isolated incidents—that tend to include the repeated use of physical, sexual and emotional abuse, threats, intimidation, isolation and economic coercion. *See, e.g.,* Anne L. Ganley, ''Understanding Domestic Violence,'' in Improving The Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers 15 (Debbie Lee *et al.* eds., 1996). Second, both domestically and internationally, domestic violence centers on power and control over the victim. *See, e.g.,* Violence against Women in the International Community, 7 Cardozo J. Int'l & Comp. L. 205–318 (multiple authors discussing violence against women internationally). *See generally* Violence Against Women: An International and Interdisciplinary Journal (multiple volumes). Consequently, when victims attempt to flee the abusive relationship, or otherwise assert their independence, abusers often pursue them and escalate the violence to regain or reassert control. *See, e.g.,* United States Department of Justice, Stalking and Domestic Violence: The Third Annual Report to Congress under the Violence Against Women Act (1998); *see also* Barbara J. Hart, ''The Legal Road to Freedom,'' in Battering and Family Therapy: A Feminist Perspective 13 (Marsali Hansen & Michele Harway eds., 1993) (citing a variety of studies on separation violence). The risk of lethality to the victim is typically greatest when she attempts to escape the abuse and, in contrast to other persecution cases where the persecutor's desire to harm the victim may wane if the victim leaves, the victim's attempt to leave typically increases the abuser's motivation to locate and harm her. *See, e.g.,* Kerry Healey *et al.*, Batterer Intervention: Program Approaches and Criminal Justice Strategies (United States Department of Justice, National Institute of Justice, Feb. 1998); 27 Population Reports 7 (discussing this issue in foreign countries); Evan Stark & Anne Flintcraft, ''Violence Among Intimates: An Epidemiological Review,'' in Handbook of Family Violence 293 (Vincent B. Van Hasselt *et al.* eds., 1988); Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issues of Separation, 90 Mich. L. Rev. 1, 64–65 (1991). Third, because of the abuser's intimate relationship with the victim, he is likely to possess important information about where the victim could go or to whom she would turn for assistance.

These observations seem to support retaining the presumption of well-founded fear of future persecution for those applicants who have established past persecution by an individual non-state actor in the domestic violence context. The Department recognizes however, that this rule does not address other types of individual, non-state actor cases that may arise in the future. Therefore, the Department solicits suggestions as to whether it should continue to maintain the presumption of well-founded fear of future persecution, including the presumption of internal relocation, in cases involving persecutors who are non-state actors. The Department welcomes the views of the public on the merits of the approach proposed in this rule and will carefully weigh all comments in articulating the final rule.

In all cases of past persecution the government may rebut the presumption of well-founded fear of future persecution. The Department recognizes that, especially if the general rule concerning burden of proof is retained for cases involving individual non-state actors, some of the new types of claims

based on persecution by individuals may present a question of production of evidence useful to rebuttal that may be uniquely in the hands of the applicant claiming persecution. Moreover, whether or not the burden of proof is retained in this context, the Department has concluded that it would be appropriate to codify long-standing principles of law relating to the applicant's burden of production in asylum and withholding cases. For example, in the domestic violence context, an applicant's claim will rest on direct evidence regarding her experiences with the persecutor that are not addressed in general country conditions information. Circumstantial evidence, such as general country conditions information also may support such a claim. Under current case law, evidence relating to the applicant's personal experiences or personal knowledge of the likelihood of future harm should be provided by the applicant if reasonably available, or an explanation should be given as to why such information was not presented. This is well-established in the case law. *See Matter of S–M–J–,* 21 I. & N. Dec. 722, 724 (BIA 1997)(*en banc*). Furthermore, ''where there are significant, meaningful evidentiary gaps, applications will ordinarily have to be denied for failure of proof.'' *Matter of Dass,* 20 I. & N. Dec. 120, 124 (BIA 1989) (citing 8 CFR 208.5, 242.17(c)(1988)).

Being accorded the presumption of well-founded fear does not relieve the applicant of the burden of producing testimony or documentation reasonably available, especially evidence within the knowledge of the applicant. Failure to do so can be considered in (1) making a factual determination that the presumption has been rebutted, (2) in credibility determinations, and (3) in the exercise of discretion in granting asylum. The inquiry of an immigration judge or asylum officer considering evidence relevant to a discretionary grant of asylum or a grant of withholding will normally include factors relating to future persecution even in cases where past persecution has been shown. For example, the adjudicator should make inquiries into factors such as whether there has been a fundamental change in circumstances, the ability of the applicant to relocate, the location and status of the persecutor if known, and any evidence of a pattern of pursuit by the persecutor. This is consistent with the adjudicator's ability to consider all facts he or she deems relevant to an asylum or withholding claim.

Finally, this proposed rule adds language to §§ 208.13(b)(1)(ii) and 208.16(b)(1)(ii) clarifying the procedural handling of asylum and withholding claims in cases where the government has the burden of rebutting a presumption of well-founded fear of persecution or likelihood of future threat to life or freedom. The final regulations on asylum procedures published in conjunction with this proposed rule provide that, when an applicant for asylum establishes that he or she suffered past persecution, the applicant will be presumed also to have a well-founded fear of persecution, unless a preponderance of the evidence establishes that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution, or the applicant could reasonably avoid future persecution by relocating to another part of the applicant's country or, if stateless, the applicant's country of last habitual residence. *See* 8 CFR 208.13(b)(1)(i). A similar presumption applies to applicants for withholding of removal. *See* 8 CFR 208.16(b)(1) (upon showing of past persecution, presumption arises that it is more likely than not that applicant will face future persecution, unless a preponderance of the evidence demonstrates fundamental change of circumstances or that it would be reasonable for the applicant to relocate within the country of persecution).

Confusion has arisen concerning the proper disposition of cases in which a finding of no past persecution is reversed on appeal. This rule will codify a principle that, when an immigration judge or the Board finds that the applicant has failed to establish past persecution, the question of fundamental changed circumstances and reasonable internal relocation shall be deemed reserved, and the Service shall not be required to present evidence on fundamental changed circumstances or reasonable internal relocation to preserve the issues. Accordingly, if the immigration judge's or Board's finding of no past persecution is set aside, the Service will remain free on remand to present evidence and argument on the question of changes in country conditions or internal relocation.

This rule is consistent with established rules governing judicial review of agency action and of civil procedure. When a federal court reviews final agency action such as a decision of the Board:

> [i]f the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation. The reviewing court is not generally empowered to conduct a *de novo* inquiry into the matter being reviewed and to reach its own conclusions based on such an inquiry.

Florida Power & Light Co. v. *Lorion,* 470 U.S. 729, 744 (1985). Similarly, in ordinary civil litigation, absent a contrary order in the particular case, if a party moves for, or a district court grants, summary judgment for a party on one of a number of potentially dispositive grounds, that ruling does not mean that the party is abandoning or the court is addressing *sub silentio* possible alternative grounds of decision. And, if that narrow grant of summary judgment is reversed on appeal, the court of appeals does not proceed to enter summary judgment for the opposing party on a ground that was not addressed by the district court's ruling. Rather, the case is remanded for further proceedings.

We have concluded that a similar approach should be made explicit in the context of immigration judge or Board decisions finding an absence of past persecution—the immigration judge's or Board's silence on the question of fundamental changed circumstances or reasonable internal relocation should not be considered an implicit resolution of the question, and the case should be remanded for the presentation of evidence and a decision by the Board or immigration judge in the first instance. The contrary practice is not only inconsistent with ordinary practice, but encourages the Board, immigration judges, and the Service to engage in potentially wasteful expenditures of resources litigating and deciding issues that may not ever need to be resolved in the proceeding if the initial finding of no past persecution is sustained.

This rule, once final, will apply to all cases currently pending before the asylum office, the immigration courts and the Board of Immigration Appeals.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because this rule involves the process for adjudication of certain requests for asylum and withholding of removal. This process affects individuals and not small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the states, on the relationship between the national Government and the states, or on the distribution of power and responsibility among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 208 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

2. Section 208.13 is amended by revising paragraphs (b)(1) and (b)(1)(ii)(B) to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(b) * * *

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to or avail himself or herself of the protection of that country owing to such persecution. An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section. If the applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded. Although a presumption of future persecution is raised by a finding of past persecution, this does not relieve the applicant of the burden of producing testimonial evidence or, where reasonably available to the applicant, documentary evidence relating to future persecution, including to a fundamental change in circumstances or the reasonableness of internal relocation.

(i) * * *

(ii) * * *

(B) When the immigration judge or Board finds that the applicant has failed to establish past persecution, the questions of fundamental changed circumstances and reasonable internal relocation shall be deemed reserved and the Service shall not be required to present evidence to preserve the issues. If that finding is set aside, the Service and the applicant shall be permitted on remand to submit evidence and argument on the questions of fundamental changed circumstances and reasonable internal relocation before any ruling on these matters is issued.

* * * * *

3. Section 208.15 is revised to read as follows:

§ 208.15 Definitions.

(a) *Persecution.* Persecution is the infliction of objectively serious harm or suffering that is subjectively experienced as serious harm or suffering by the applicant, regardless of whether the persecutor intends to cause harm. Inherent in the meaning of the term persecution is that the serious harm or suffering that an applicant experienced or fears must be inflicted by the government of the country of persecution or by a person or group that government is unwilling or unable to control. In evaluating whether a government is unwilling or unable to control the infliction of harm or suffering, the immigration judge or asylum officer should consider whether the government takes reasonable steps to control the infliction of harm or suffering and whether the applicant has reasonable access to the state protection that exists. Evidence of the following are pertinent and may be considered: Government complicity with respect to the infliction of harm or suffering at issue; attempts by the applicant, if any, to obtain protection from government officials and the government's response to these attempts; official action that is perfunctory; a pattern of government unresponsiveness; general country conditions and the government's denial of services; the nature of the government's policies with respect to the harm or suffering at issue; and any steps the government has taken to prevent infliction of such harm or suffering.

(b) *On account of the applicant's protected characteristic.* An asylum applicant must establish that the persecutor acted, or that there is a reasonable possibility that the persecutor would act, against the applicant on account of the applicant's race, religion, nationality, membership in a particular social group, or political opinion, or on account of what the persecutor perceives to be the

applicant's race, religion, nationality, membership in a particular social group, or political opinion. In cases involving a persecutor with mixed motivations, the applicant must establish that the applicant's protected characteristic is central to the persecutor's motivation to act against the applicant. Both direct and circumstantial evidence may be relevant to the inquiry. Evidence that the persecutor seeks to act against other individuals who share the applicant's protected characteristic is relevant and may be considered but shall not be required.

(c) *Membership in a particular social group.*

(1) A particular social group is composed of members who share a common, immutable characteristic, such as sex, color, kinship ties, or past experience, that a member either cannot change or that is so fundamental to the identity or conscience of the member that he or she should not be required to change it. The group must exist independently of the fact of persecution. In determining whether an applicant cannot change, or should not be expected to change, the shared characteristic, all relevant evidence should be considered, including the applicant's individual circumstances and information country conditions information about the applicant's society.

(2) When past experience defines a particular social group, the past experience must be an experience that, at the time it occurred, the member either could not have changed or was so fundamental to his or her identity or conscience that he or she should not have been required to change it.

(3) Factors that may be considered in addition to the required factors set forth in paragraph (b)(2)(i) of this section, but are not necessarily determinative, in deciding whether a particular social group exists include whether:

(i) The members of the group are closely affiliated with each other;

(ii) The members are driven by a common motive or interest;

(iii) A voluntary associational relationship exists among the members;

(iv) The group is recognized to be a societal faction or is otherwise a recognized segment of the population in the country in question;

(v) Members view themselves as members of the group; and

(vi) The society in which the group exists distinguishes members of the group for different treatment or status than is accorded to other members of the society.

(d) *Firm resettlement.* An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(1) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(2) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

4. Section 208.16 is amended by revising paragraphs (b)(1) and (b)(1)(ii)(B) to read as follows:

§ 208.16 Withholding of removal under section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture.

* * * * *

(b) * * *

(1) *Past threat to life or freedom.* (i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence that paragraph (b)(1)(i)(A) or (B) of this section applies. If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm. Although a presumption of future persecution is raised by a finding of past persecution, this does not relieve the applicant of the burden of producing testimonial evidence, or where reasonably available to the applicant, documentary evidence, relating to future persecution, including to a fundamental change in circumstances or the reasonableness of internal relocation.

(i) * * *

(ii) * * *

(B) When the immigration judge or Board finds that the applicant has failed to establish past persecution, the questions of fundamental change in circumstances and reasonable internal relocation shall be deemed reserved and the Service shall not be required to present evidence to preserve the issues. If that finding is set aside, the Service and the applicant shall be permitted on remand to submit evidence and argument on the questions of fundamental change in circumstances and reasonable internal relocation before any ruling on these matters is issued.

* * * * *

Dated: November 22, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–30602 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–052G]

Occupational Exposure to Cotton Dust

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

ACTION: Proposed rule; request for comments.

SUMMARY: OSHA is proposing to amend the Cotton Dust Standard to add batch kier washed cotton to the types of washed cotton granted partial exemption from the Cotton Dust Standard, because those methods greatly reduce the risk of byssinosis when that cotton is spun and woven. This amendment is based on the recommendation of the industry/government/union Task Force for Byssinosis Prevention and supported by published studies and government, union, and industry experts.

Because OSHA believes the amendment is not controversial, the Agency is issuing it as a direct final rule published in the Final Rules section of

today's **Federal Register**. If no significant adverse comment is received on the direct final rule, OSHA will confirm the effective date of the final rule. If significant adverse comment is received, OSHA will withdraw the direct final rule and proceed with rulemaking on this proposal. A subsequent **Federal Register** document will be published to announce OSHA's action.

DATES: Written comments and requests for a hearing on this proposed rule must be submitted or sent electronically by February 5, 2001.

ADDRESSES: Comments and requests for a hearing may be sent in quadruplicate to Docket No. H–052G, Docket Office, Room N2625; Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington D.C. 20210 (202–693–2350).

Alternatively, one paper copy and one disc (3½ inch floppy in WordPerfect 6.0, 8.0 or ASCII) may be sent to the Docket mailing address; or one copy faxed to 202–693–1648 and 3 paper copies mailed to the Docket mailing address; or one copy E-mailed to *ecomments.osha.gov* and one paper copy mailed to the Docket mailing address.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Bayard, Director of Office Risk Assessment, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 693–2275.

SUPPLEMENTARY INFORMATION:

Background

OSHA is today publishing a Direct Final Rule (DFR) adding batch kier washing to the types of washed cotton receiving partial exemption from the Cotton Dust Standard. A complete discussion of that amendment is published in the preamble to the DFR. The DFR is published in the Final Rules section of today's **Federal Register**. That discussion includes the scientific basis for the amendment, the regulatory text, and other supporting information. That discussion is incorporated as part of this proposal.

Public Participation

Any persons with significant adverse comments must submit those comments to the DFR by the dates specified in that document published in the Final Rules section of today's **Federal Register**.

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be received by February 5, 2001 and submitted in quadruplicate to the Docket No. H–052G, Docket Office; Room N2625; Occupational Safety and Health Administration; U.S. Department of Labor, 200 Constitution Ave., N.W., Washington DC 20210.

Alternatively, one paper copy and one disc (3½ inch floppy in WordPerfect 6.0, 8.0 or ASCII) may be sent to that address, or one copy faxed to (202) 693–1648 and 3 paper copies mailed to the Docket mail address or one copy E-mailed to *ecomments.osha.gov* and one paper copy mailed to the Docket mail address.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

OSHA requests comments on all issues related to granting cotton mildly washed in the batch kier system partial exemption from OSHA's cotton dust standard and findings that there are no negative economic, environmental or other regulatory impacts. OSHA is not requesting comment on any other issues nor opening the record for any other issues except for this amendment to paragraph (n)(4).

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in the same manner as comments to the Docket Office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;

2. The objections must be mailed by January 22, 2001;

3. The objections must specify with particularity the grounds upon which the objection is based;

4. Each objection must be separately numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who object to the proposed amendment or have changes to recommend may, of course, make those objections and their recommendations in their written comments and OSHA will fully consider them. There is no need to file formal ''objections'' separately unless the interested person requests a public hearing.

OSHA recognizes that there may be interested persons who through their knowledge of health or their experience in the operations involved, would wish to endorse or support the amendment. OSHA welcomes such supportive comments, in order that the record of this rulemaking may present a balanced picture of the public response on the issues involved.

List of Subjects in 29 CFR Part 1910

Cotton dust, Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C 653, 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911. Part 1910, Title 29, Code of Federal Regulations, is proposed to be amended as set forth below.

Signed at Washington, DC, this 4th day of December, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is hereby proposed to be amended as set forth below:

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 is proposed to be amended to read as follows:

Authority: Sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6 (b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000 Z–1, Z–2, Z–3, and 1910.1043(n) also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1018, 1910.1029 and 1910.1200 are also issued under 29 U.S.C. 653.

2. OSHA proposes to amend § 1910.1043 by revising paragraph (n) (4) as follows:

§ 1910.1043 Cotton dust.

* * * * *

(n) * * *

* * * * *

(4) *Higher grade washed cotton.* The handling or processing of cotton classed as ''low middling light spotted or better'' (color grade 52 or better and leaf grade code 5 or better according to the 1993 USDA classification system) shall be exempt from all provisions of the standard except the requirements of paragraphs (h) medical surveillance, (k) (2) through (4) recordkeeping—medical records, and Appendices B, C, and D of this section, if they have been washed on the following systems.

(i) On a continuous batt system or a rayon rinse system including the following conditions:

(A) With water;

(B) At a temperature of no less than 60° C;

(C) With a water-to-fiber ratio of no less than 40:1; and

(D) With the bacterial levels in the wash water controlled to limit bacterial contamination of the cotton.

(ii) On a batch kier washing system including the following conditions:

(A) With water;

(B) With cotton fiber mechanically opened and thoroughly prewetted before forming the cake;

(C) For low-temperature processing, at a temperature of no less than 60° C with a water-to-fiber ratio of no less than 40:1; or, for high-temperature processing at a temperature of no less than 93° C with a water-to-fiber ratio of no less than 15:1;

(D) With a minimum of one wash cycle followed by two rinse cycles for each batch, using fresh water in each cycle, and

(E) With bacteria levels in the wash water controlled to limit bacterial contamination of the cotton.

* * * * *

[FR Doc. 00–31187 Filed 12–6–00; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

Emergency Medical Services and Evacuation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by adding a prescription and clause requiring contractors to make all arrangements for emergency medical services and evacuation for its employees when performing a NASA contract outside the United States or in remote locations in the United States. The clause also requires the contractor to reimburse the Government for costs that are incurred in cases where the Government is requested by the contractor, and the Government agrees to provide the medical services or evacuation.

DATES: Comments should be submitted on or before February 5, 2001.

ADDRESSES: Interested parties should submit written comments to Joseph Le Cren, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments also may be submitted by e-mail to: *jlecren@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Le Cren, (202) 358–0444, or *jlecren@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

There have been some cases where contractor employees were required to receive emergency medical services and be evacuated while performing on NASA contracts outside the United States. Although not responsible for providing the emergency medical or evacuation services, NASA believed that the interests of the contractor employees were paramount. However, this resulted in situations where NASA incurred significant costs, which ultimately were reimbursed by the contractor, but possibly could have been disputed. NASA desires to eliminate such situations which could have a significant adverse financial impact on the agency. The proposed clause notifies offerors and contractors that they are responsible for making all arrangements for providing emergency medical services and evacuation, if necessary, for their employees when performing NASA contracts outside the United States. The proposed clause also recognizes that similar situations may occur in remote locations in the United States. In addition, the clause recognizes that certain situations could arise where the Government would be requested to provide emergency medical services or evacuate contractor employees. The clause makes it clear that, if the Government provides such services or evacuation, the contractor will reimburse the Government for the costs incurred.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of the small number of contracts awarded to small businesses involving contract performance outside the United States or in remote locations in the United States.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1842 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1842 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION AND AUDIT PROCEDURES

2. Amend Part 1842 by adding section 1842.7003 to read as follows:

1842.7003 Emergency medical services and evacuation.

The contracting officer must insert the clause at 1852.242–78, Emergency Medical Services and Evacuation, in all solicitations and contracts when employees of the contractor are required to travel outside the United States or to remote locations in the United States.

3. Amend Part 1852 by adding section 1852.242–78 to read as follows:

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.242–78 Emergency Medical Services and Evacuation.

As prescribed in 1842.7003, insert the following clause:

Emergency Medical Services and Evaluation (XXXX)

The Contractor shall be responsible for making all arrangements for emergency medical services and evacuation, if required, for its employees while performing work under this contract outside the United States or in remote locations in the United States. If necessary to deal with certain emergencies, the Contractor may request the Government to provide medical or evacuation services. If the Government provides such services, the Contractor shall reimburse the Government for the costs incurred.

(End of clause)

[FR Doc. 00–31102 Filed 12–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000323080-0329-02; I.D. 031500A]

RIN 0648-AN97

Atlantic Highly Migratory Species (HMS); Atlantic Tunas Reporting, Fishery Allocations and Regulatory Adjustments

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

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic HMS fisheries to require mandatory dealer reporting of all purchases of Atlantic bigeye, albacore, yellowfin, and skipjack (BAYS) tunas; adjust the north-south dividing line for the Atlantic bluefin tuna (BFT) Angling category subdivisions; adjust associated subquota percentages allocated to each area; modify regulatory text to clarify the requirement that imports, exports, and re-exports of bluefin tuna (both Atlantic and Pacific subspecies) must be accompanied by a Bluefin Tuna Statistical Document (BSD); and modify regulatory text to facilitate enforcement of, and compliance with, the regulations. The proposed regulatory amendment is necessary to comply with the United States' obligations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act (ATCA), and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). NMFS will hold public hearings to receive comments from fishery participants and other interested parties regarding the proposed regulatory amendment.

DATES: Written comments must be received on or before January 30, 2001.

The public hearing dates are:

1. December 11, 2000, 7–9 p.m., Ocean City, MD.

2. December 12, 2000, 7–9 p.m., Cape May, NJ.

ADDRESSES: Written comments on the proposed regulatory amendment should be sent to Christopher Rogers, Acting Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Comments also may be sent via facsimile (fax) to (301) 713-1917. Comments will not be accepted if submitted via e-mail or the Internet. Comments regarding the collection of information requirements contained in this proposed rule should be sent to the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC, 20503 (Attention: NOAA Desk Officer).

The public hearing locations are:

1. Cape May—The Inn of Cape May, 7 Ocean St, Cape May, NJ 08204.

2. Ocean City—Ocean City Rec & Parks Dept., 200–125th Street, Ocean City, MD 21842.

FOR FURTHER INFORMATION CONTACT: Pat Scida, (978) 281–9208.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

BAYS Dealer Reporting

On May 28, 1999, NMFS published in the Federal Register (64 FR 29090) final regulations implementing the HMS FMP that was adopted and made available to the public in April 1999. The implementing regulations require dealers that receive Atlantic swordfish and Atlantic sharks from U.S. vessels to report to NMFS all Atlantic tunas (including BAYS) received from U.S. vessels (50 CFR 635.5(b)(1)(i)). The regulations require dealers to report BAYS tunas only when received together with sharks and swordfish. As BAYS tunas are usually landed and sold along with other species, and because many dealers voluntarily report their BAYS purchases (dealers are often permitted in several fisheries and record all purchases on a consolidated HMS reporting form), the lack of mandatory reporting of BAYS tunas has not likely resulted in significant underreporting. Recently, however, several new dealers in the U.S. Virgin Islands and Puerto Rico have obtained dealer permits, and most of these dealers are handling BAYS tunas only. In order to collect data from these new dealers and to ensure that U.S. data on BAYS tunas are complete, NMFS needs to require that all purchases of BAYS tunas be reported, regardless of whether other regulated HMS are purchased. NMFS, therefore, proposes to amend the HMS regulations to require dealers to report all purchases of BAYS tunas, regardless of whether they also purchase Atlantic sharks or swordfish. Similar to current reporting regulations for sharks and swordfish, NMFS proposes to require dealers to submit negative reports for reporting periods in which they do not purchase and/or receive BAYS tunas.

BFT Angling Category Geographical Division

In response to quota reductions in 1992, two management areas were created for the BFT Angling category fishery. The north-south division line is located at 38°47' N. latitude (Delaware Bay). The geographic split was designed to enable NMFS to manage the early season (June/July off the Virginia to Delaware coasts) and late season (August/September off the New Jersey to Massachusetts coasts) to manage BFT fisheries under separate quotas, corresponding with the summer feeding migration of school, large school, and small medium BFT.

For the last several BFT fishing seasons, NMFS has received comments that an adjustment to the Angling category BFT north-south division line is warranted. Specifically, vessels fishing for BFT from ports in southern New Jersey, which is in the northern area, tend to utilize fishing areas located in the southern area (*i.e.,* offshore of Ocean City, Maryland). This pattern of activity raises two concerns with respect to the dividing line for the southern and northern areas. First, when the southern and northern areas are both open, a significant number of fish caught in the southern area are landed in the northern area and counted against the applicable northern area subquotas. Second, when the southern area is closed, vessels from southern New Jersey are effectively excluded from the school BFT fishery because the fish are generally

distributed too far north to accommodate single-day trips.

Because of differing opinions on where a new dividing line should be placed and on the associated reallocation of subquotas, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on April 10, 2000 (65 FR 18960), requesting public comments regarding the geographical division of the BFT Angling category fishery and whether an adjustment of the north-south division line and an associated adjustment of the BFT subquota percentages allocated to each area is warranted.

During the comment period, NMFS received 13 comments on the ANPR, and NMFS staff attended an industry-sponsored meeting regarding the ANPR in Ocean City, MD. The comments received as well as the recommendations from the meeting indicate an industry preference for adjustment of the north-south dividing line to Ocean City, NJ, at 39o18' N. lat., just north of Great Egg Inlet. Moving the line to this location would effectively isolate the recreational fisheries, since virtually all vessels fishing for BFT from Ocean City, NJ, and areas south fish in the southern, early season fishery (as suggested to NMFS in previous public comments). Adjustment of the line may reduce confusion regarding fishing areas and catch limits and may prevent vessels from being excluded from participating in the fishery, particularly when seasonal retention limits are different in the two areas. Thus, NMFS proposes to move the line to this new location and has preliminarily determined that this proposed action would ensure reasonable fishing opportunities in all geographic areas without risking overharvest of the Angling category quota.

Angling Category BFT Subquotas

Public comment on an appropriate subdivision of Angling category quota between the two areas was less consistent than on the location of the dividing line. Several comments supported the status quo, whereas other comments suggested a transfer of a small amount of quota (i.e., 2 to 5 metric tons (mt)) from the north to south. However, most comments suggested switching the current allocation percentage from 52.8 percent in the north and 47.2 percent in the south to 47.2 percent to the north and 52.8 percent to the south. Comments generally supported the notion that any change be fair and equitable based on the geographic extent of the adjustment to the dividing line.

However, the geographic distance involved in the movement of the dividing line is slight (31 nautical miles), and at this fine spatial resolution, data are insufficient to determine the precise changes in landings for the respective areas. Nevertheless, as a consequence of moving the dividing line, additional catch is now expected to be applied against the southern area (with a corresponding decrease in the north), and some change in quota allocation is appropriate between these two areas. Therefore, NMFS proposes to reverse the Angling category subquota allocations to 47.2 percent for the north and 52.8 percent for the south. Thus, as an example, if the total Angling category quota for school-size BFT were 100 mt, the reallocation from the north to the south would be approximately 5.6 mt. Public comment is specifically requested on the proposed reallocation of quota, as well as any suggestions for alternative quota reallocations.

BSD Requirements

On March 17, 1995, NMFS published final regulations requiring an appropriately completed, approved BSD as a condition for import, export, or re-export of bluefin tuna into or from the United States (60 FR 14381). Because the Atlantic and Pacific stocks of northern bluefin tuna are of the same species subject to the ICCAT recommendations, implementation of, and compliance with, the ICCAT BSD program also applies to Pacific bluefin tuna. Implementing regulations for the HMS FMP, published on May 28, 1999 (64 FR 29090), were not intended to alter the applicability of the BSD regulations, but due to the definitions and acronyms used to define Atlantic bluefin tuna (i.e., BFT) and all species of northern bluefin tuna (i.e., bluefin tuna), the regulatory text requires clarification. The proposed revision would clarify that the BSD requirements, consistent with ICCAT recommendations, apply to all northern bluefin tuna (i.e., northern bluefin tuna from both the Atlantic and Pacific oceans), not just BFT.

Facilitation of Enforcement and Compliance

Tagging and Offloading of BFT

Current regulations specify that large medium and giant BFT caught and retained by vessels in a commercial Atlantic tunas vessel permit category must be tagged upon offloading. Numerous vessels that are not permanently docked at any particular port, but that are brought to a launch site by a trailer, are used to fish for BFT under the General category quota. Current regulations can be interpreted to allow vessels to be removed from the water and trailered away from the landing port, with an untagged BFT inside the vessel. This proposed rule would amend the regulations to require that, for trailered vessels, BFT be tagged immediately upon the vessel being removed from the water.

Definition of Pelagic Longline Gear

The regulatory text for the final rule implementing the DeSoto Canyon, east Florida coast, and Charleston Bump closures (65 FR 47214, August 1, 2000) defines pelagic longline gear in a manner designed to avoid applying the vessel monitoring system requirement and fishing restrictions to vessels fishing with bottom longline gear. The regulations define pelagic longline gear as a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom. It consists of five components: a power-operated longline hauler, a mainline, high-flyers, floats capable of supporting the length of the mainline, and leaders (gangions) with hooks. Those regulations further state that the removal of any one of these components from a vessel constitutes the removal of pelagic longline gear. Vessel operators removing one or all of the listed components would be eligible to fish in the closed areas and would not be required to operate a VMS while at sea.

Since publication of the time and area requirements, NMFS has become aware that it is possible to use a longline that is suspended by floats without the use of high-flyers. Fishing vessels could potentially utilize the remaining components of pelagic longline gear in the areas when closed to target HMS with pelagic longlines in the closed areas, thereby undermining the objective of bycatch reduction and reducing the benefits of the closures. Removal of the term ''high-flyer'' from the list of components constituting pelagic longline gear would avoid this potential problem. This measure would have no measurable impact on the environment or fishermen, since the intent of the closures is to prohibit all pelagic longline fishing by vessels with HMS fishing permits when the areas are closed. The environmental, economic, and social impacts associated with the closures were previously considered and are discussed in detail in the HMS FMP and Final Supplemental Environmental Impact Statement issued for the August 1, 2000, final rule.

Swordfish Minimum Size

In 1991, ICCAT adopted a prohibition on the taking and landing of swordfish, in the entire Atlantic Ocean, weighing less than 25 kg (55 lbs) or measuring less than 125 cm (approximately 50 inches) Lower Jaw Fork Length (LJFL), with a tolerance of 15 percent undersized fish. In 1996, the United States adopted an alternative minimum size of 119 cm (47 inches) LJFL, with no tolerance for undersized fish in order to better enforce the regulation and protect small swordfish. In recent regulations, NMFS converted the minimum size to a cleithrum to keel measurement which relates to the manner in which commercially-landed swordfish are dressed for resale (61 FR 27304, May 31, 1996).

The recreational swordfish fishery is re-emerging, particularly on the East Coast of Florida, and NMFS seeks to provide recreational fishermen with a size limit that is easy to estimate while the fish is still in the water, thereby facilitating release of undersized swordfish. Therefore, NMFS proposes to modify the existing regulations to also specify the existing size limit in terms of LJFL. This change to the regulations would specify that the LJFL of a retained swordfish must be no less than 119 cm or 47 inches. The specification of the minimum size in this manner would facilitate compliance by recreational fishermen, while allowing for retention of legal-sized swordfish in the fishery.

Collection of Scientific or Management Information

In addition to the measures here, this proposed rule would restore a prohibition on assaulting or impeding NMFS employees or contractors collecting scientific or management information on Atlantic HMS that was inadvertently omitted when the HMS regulations were consolidated under 50 CFR part 635 (64 FR 29090, May 28, 1999).

Public Hearings and Special Accommodations

Participants at the public hearings are expected to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (i.e., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

The public hearing sites are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Pat Scida (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

After reviewing the public comments and additional information or data that may be available, NMFS will, if appropriate, make final determinations regarding the consistency of these proposed measures with the Magnuson-Stevens Act and its national standards, ATCA, the objectives of the HMS FMP, and other applicable law.

Classification

This proposed regulatory amendment is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq., and ATCA, 16 U.S.C. 971 et seq. Preliminarily, the AA has determined that the regulations contained in the proposed regulatory amendment are consistent with the Magnuson-Stevens Act, ATCA, and the HMS FMP.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed regulatory amendment, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed regulatory amendment would amend the highly migratory species regulations to require mandatory dealer reporting of all purchases of BAYS tunas, change the north/south dividing line (and quota distribution) for the Angling category BFT fishery, clarify regulations regarding BSD reporting requirements, and modify regulatory text to facilitate enforcement of, and compliance with, the regulations. Because the proposed regulations would only: (1) modify and/or clarify reporting requirements; (2) require permitted Atlantic tuna dealers to submit reports at estimated annual burden of less then 2 hours per year; (3) implement a minor change to the geographic division of the BFT Angling category division line (by approximately 30 nautical miles) and subquota allocation (by less than 10 mt); and (4) modify regulations to facilitate enforcement of, and compliance with, regulations, there is no anticipated change in revenues that would accrue to small businesses in the fishery overall, and the amendment would not alter current fishing practices in any significant way.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed regulatory amendment has been determined to be not significant for purposes of Executive Order 12866.

This proposed regulatory amendment would not significantly change the operations of any HMS fishery. Since the proposed regulatory amendment would modify reporting requirements and would not alter fishing practices, it is not expected to increase endangered species or marine mammal interaction rates.

NMFS reinitiated formal consultation for all Atlantic HMS commercial fisheries on November 19, 1999, under section 7 of the Endangered Species Act. NMFS issued a Biological Opinion (BO) on June 30, 2000, and concluded that the Atlantic pelagic longline fishery for tunas, swordfish, and sharks is likely to jeopardize the continued existence of leatherback and loggerhead sea turtles, and may adversely affect, but is not likely to jeopardize, the continued existence of other listed and protected species. Additionally, NMFS concluded that other components of the Atlantic tunas fisheries (purse seine, handgear, traps) may adversely affect, but are not likely to jeopardize, the continued existence of listed and protected species. The BO determined reasonable and prudent alternatives to avoid jeopardizing the continued existence of any protected species and incorporated an incidental take statement listing reasonable and prudent measures and terms and conditions to implement those measures that would serve to reduce takes.

Since the June 30, 2000, BO was issued, NMFS has concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Consequently, NMFS has re-initiated consultation. NMFS anticipates completing the consultation and issuing a new BO in early 2001. Until the consultation is completed and appropriate long-term measures can be determined, NMFS has implemented emergency measures in the short-term to reduce sea turtle bycatch and bycatch mortality in the pelagic longline fishery. The regulations proposed in this document, if implemented, would not likely increase takes of listed species and would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources, as they would only modify reporting

requirements and would not alter fishing practices.

The area affected by this proposed action has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of NMFS. It is not anticipated that this action will have any adverse impacts on EFH, and, therefore, no consultation is required.

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

This proposed rule contains a new collection-of-information requirement and restates several existing reporting requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The new requirement has been submitted to OMB for approval as a revision to a collection currently approved under OMB control number 0648-0013.

The new requirement that has been submitted to OMB for approval is an extension of dealer reporting requirements to Atlantic tunas, with an estimated public reporting burden of 12 minutes per response for dealers who would otherwise have been required to file a negative report (if permitted for swordfish or shark), 15 minutes for other dealers reporting purchases, and 3 minutes for other dealers to file.

This proposed rule also restates a number of collection-of-information requirements that have been approved by OMB. These requirements and their OMB control numbers and estimated response times are: swordfish and shark dealer reports (15 minutes; 0648-0013); negative reports by swordfish and shark dealers (3 minutes; 0648-0013); swordfish import dealer reports (15 minutes; 0648-0363) and swordfish certificates of eligibility (1 hour; 0648-0363); bluefin tuna landing reports (2 minutes; 0648-0239); Atlantic tuna bi-weekly dealer report (15 minutes; 0648-0239); affixing tags to bluefin tunas and transferring tag numbers to documents (10 minutes; 0648-0239).

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: (1) the need for the proposed collection of information for the proper performance of the functions of the agency, including the practical utility of the information; (2) the accuracy of the burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: November 30, 2000.

William T. Hogarth,

Deputy Assistant Administration for Fisheries, National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.5, paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii),(b)(2)(i),(b)(2)(ii)(A) and (b)(2)(ii)(B) are revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) *Atlantic HMS.* (i) Dealers that receive Atlantic tunas, Atlantic swordfish, and Atlantic sharks from U.S. vessels must report all such species received on forms available from NMFS.

(ii) Dealers that import bluefin tuna or swordfish must report all such species imported on forms available from NMFS.

(iii) Reports of Atlantic tunas, Atlantic swordfish, and Atlantic sharks received by dealers from U.S. vessels, or reports of bluefin tuna and swordfish imported, on the first through the 15th of each month, must be postmarked not later than the 25th of that month. Reports of such fish received or imported on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. For swordfish imports, a dealer must attach a copy of each certificate of eligibility to the report required under paragraph (b)(1)(ii) of this section. If a dealer issued an Atlantic tunas, swordfish or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be postmarked for the applicable reporting period as specified in this section.

* * * * *

(2) Requirements for bluefin tuna--(i) Dealer reports--(A) Landing reports. Each dealer issued an Atlantic tunas permit under § 635.4 must submit a completed landing report on a form available from NMFS for each BFT received from a U.S. fishing vessel. Such report must be submitted by electronic facsimile (fax) to a number designated by NMFS not later than 24 hours after receipt of the BFT. The landing report must indicate the name and permit number of the vessel that landed the BFT and must be signed by the permitted vessel's owner or operator immediately upon transfer of the BFT. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report.

(B) Biweekly reports. Each dealer issued an Atlantic tunas permit under § 635.4 must submit a bi-weekly report on forms supplied by NMFS for BFT received from U.S. vessels and for imports of bluefin tuna. For BFT received from U.S. vessels and for bluefin tuna imported on the first through the 15th of each month, the dealer must submit the bi-weekly report forms to NMFS postmarked not later than the 25th of that month. Reports of BFT received and bluefin tuna imported on the 16th through the last day of each month must be postmarked not later than the 10th of the following month.

(ii) * * *

(A) Affixing dealer tags. A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received from a U.S. vessel immediately upon offloading the BFT. If a vessel is placed on a trailer, the dealer or dealer's agent must affix the dealer tag to the BFT immediately upon the vessel being removed from the water. The dealer tag must be affixed to the BFT between the fifth dorsal finlet and the caudal keel.

(B) Removal of dealer tags. A dealer tag affixed to any BFT under paragraph (b)(2)(ii)(A) of this section or a BSD tag affixed to an imported bluefin tuna must remain on the fish until it is cut into portions. If the bluefin tuna or bluefin

tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number of the dealer tag or the BSD tag must be written legibly and indelibly on the outside of any package containing the tuna. Such tag number also must be recorded on any document accompanying the shipment of bluefin tuna for commercial use or export.

* * * * *

3. In § 635.20, in paragraph (f)(1), the first two sentences are revised to read as follows:

§ 635.20 Size limits.

* * * * *

(f) Swordfish. (1) No person shall take, retain, or possess a north or south Atlantic swordfish taken from its management unit that is less than 29 inches (73 cm), CK, 47 inches (119 cm), LJFL, or 33 lb (15 kg) dressed weight. A swordfish that is damaged by shark bites may be retained only if the remainder of the carcass is at least 29 inches (73 cm) CK, 47 inches (119 cm), LJFL, or 33 lb (15 kg) dw. * * *

* * * * *

4. In § 635.21, in paragraph (c) introductory text, the first sentence is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(c) Pelagic longlines. For purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. * * *

* * * * *

5. In § 635.27, paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(2) * * *

(i) Under paragraph (a)(7)(ii) of this section, 52.8 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve, may be caught, retained, possessed, or landed south of 39°18' N. lat.;

(ii) An amount equal to 52.8 percent of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat.;

(iii) An amount equal to 66.7 percent of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat.

* * * * *

6. In the following sections, remove the word ''tuna'', each time it appears, and add in its place the words ''bluefin tuna''.

§ 635.42 [Amended]

a. Section 635.42, paragraphs (a)(1), (a)(2), (a)(3), and (b)(3).

§ 635.43 [Amended]

b. Section 635.43, paragraphs (a)(2), and (a)(12).

7. In the following sections, remove the acronym ''BFT'', each time it appears, and add in its place the words ''bluefin tuna''.

§ 635.41 [Amended]

a. Section 635.41 introductory text, paragraph (a) introductory text, paragraphs(a)(1), (a)(2), and (b).

§ 635.42 [Amended]

b. Section 635.42, paragraph (a) heading, paragraphs (a)(1), (a)(2), (a)(3), (b) heading, (b)(1), (b)(2), and (b)(3).

§ 635.43 [Amended]

c. Section 635.43, paragraphs (a)(2), (a)(5), (b), and (c).

d. Section 635.44, paragraphs (a) and (b).

§ 635.44 [Amended]

e. Section 635.45.

§ 635.45 [Amended]

f. Section 635.47

§ 635.47 [Amended]

g. Section 635.71 paragraphs (a)(24),(b)(25), and (b)(26).

8. In § 635.71, paragraph (a)(35) is added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(35) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic HMS.

* * * * *

[FR Doc. 00–31104 Filed 12–1–00; 4:58 pm]

BILLING CODE: 3510–22–S

Notices

Federal Register
Vol. 65, No. 236
Thursday, December 7, 2000

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

[Docket No. 00–045–1]

Office of the Secretary; Declaration of Emergency Because of Rabies

Wildlife is the dominant reservoir for rabies in the United States. Rabies transmission from wildlife carnivores poses a serious threat to animal and human health in the United States. Rabid raccoons, foxes, and coyotes attack large farm animals not normally considered prey, such as cattle. Larger farm animals often survive these attacks and become infected with rabies. Humans who work in close contact with infected livestock, as well as other animals that come in contact with such livestock, are at risk of exposure to rabies. In addition, the agricultural environment often provides food and refuge that are attractions for wildlife that may in turn directly place farmers, ranchers, their families, and other people in rural communities at risk of exposure to rabies.

If new rabies strains such as those transmitted by raccoons, gray foxes, and coyotes are not prevented from spreading to broader areas of the United States, the health threats and costs associated with rabies are expected to increase substantially. In the area that stretches west from the leading edge of the current distribution of raccoon rabies (which stretches from Alabama northeastward along the western edge of the Appalachian Mountains to Maine) to the Rocky Mountains, and north from the distribution of gray fox and coyote rabies in Texas, there are more than 111 million livestock animals—including cattle, horses, mules, swine, goats, and sheep—valued at $42 billion. If raccoon, gray fox, or coyote rabies were to spread into the above described area, the livestock there would be at risk to these specific rabies variants. Additionally, raccoon, coyote, and fox rabies-related costs for human health care, education, vaccination, and animal control in the United States currently exceed $450 million annually. These costs are expected to increase substantially if rabies is allowed to spread into the described area.

In recent years, the Animal and Plant Health Inspection Service (APHIS) and the States affected by rabies have been working cooperatively to address rabies outbreaks by implementing an oral rabies vaccination program (ORVP), which establishes and maintains immunization barriers to control the disease within the outbreak zone and prevent its spread to new areas. APHIS contributed $1.3 million in FY 1998 and $1.5 million in FY 1999 and FY 2000 toward these rabies control efforts. While vaccination barriers have been established, reduced State funding in Texas and rapid expansion of raccoon rabies in the northeastern and midwestern portions of the United States threaten to compromise the established ORVP barriers.

The Texas ORVP

Since the program's inception in 1995, the Texas ORVP has been successful in controlling the outbreak of rabies in coyotes, but the rabies outbreak in gray foxes presents a more complex challenge. The objective of the gray fox program has been to encircle the outbreak with a barrier of vaccinated foxes and then move inward, reducing the geographic distribution of fox rabies within the outbreak zone. So far, the program has been successful in halting the spread of the disease. No rabies cases have developed in gray foxes beyond the established ORVP barrier. However, these program gains and any potential advances are in jeopardy. Due to reduced State funding levels this year, the State of Texas is unable to maintain the entire ORVP barrier for gray foxes. The State has enough funds to maintain only the eastern side of the ORVP barrier. This limitation compromises the health and safety of livestock, other animals, and humans. Reestablishing the entire ORVP barrier for gray foxes and continuing to eliminate rabies within the outbreak zone are critical.

The Ohio, Pennsylvania, and West Virginia ORVP

Since 1998, APHIS and the State of Ohio have been working cooperatively to establish a vaccination barrier against raccoon rabies on the State's eastern border. The current Ohio barrier extends from Lake Erie to East Liverpool and was strategically placed to halt the westward spread of raccoon rabies. A recent case of raccoon rabies on the West Virginia side of the Ohio River, however, suggests that the current barrier is inadequate and should be expanded. APHIS and State officials have determined that an effective barrier would require widening the existing barrier and extending it south to meet the Appalachian Ridge in West Virginia, where the mountainous habitat can also act as a geographical barrier to prevent the spread of rabies. By bridging the gap between the current Ohio barrier and the Appalachian Mountains, the program will reduce the risk of the disease entering the midwestern region of the United States, where it would increasingly threaten livestock, human populations, and other animals, and significantly raise the control costs throughout the region.

The Northeastern United States and Canadian Border ORVP

APHIS has also been working with the Departments of Health in Vermont and New York, several New York counties, Cornell University, and the Canadian Provinces of Quebec and Ontario to establish a rabies vaccination barrier along the U.S.-Canadian border. The northern border ORVP zone currently extends from Niagara Frontier in western New York to the St. Lawrence River, through the upper Lake Champlain Valley, and terminates in northern central Vermont. A gap in the barrier needs to be filled from its eastern point to the Connecticut River Valley in eastern Vermont and New Hampshire. APHIS and its cooperators have an opportunity to contain the movement of the disease by bridging the gaps in the barriers before the currently vaccinated area is compromised. This area is particularly susceptible due to the abundant raccoon populations present along the river systems. The further north and west the disease moves, the more likely it is that livestock, humans, and other animals will become exposed to infected wildlife. Vaccinating in these new corridors and adding sufficient width to existing barriers are critical to containing the northward spread of raccoon rabies.

So far, Ohio, Texas, and New York have provided the majority of funds for the cooperative programs. Pennsylvania and West Virginia do not have the resources to contribute to this effort or to conduct independent rabies control programs. The total amount of funding needed in FY 2000 to begin reestablishing an adequate ORVP in Texas and expanding existing ORVP's in the northeastern region of the United States and in Ohio is estimated to be $4.1 million ($0.4 million in New York, $0.3 million in Ohio, $1.5 million in Pennsylvania and West Virginia, $1.7 million in Texas, and $0.2 million in Vermont).

APHIS has insufficient funds to expand the ORVP in New York, Ohio, Pennsylvania, Texas, Vermont, and West Virginia. With additional funds, APHIS can continue the ORVP in these States, which is necessary to prevent the spread of rabies.

Therefore, in accordance with the provisions of the Act of September 25, 1981, as amended (7 U.S.C. 147b), I declare that there is an emergency that threatens the agricultural production industry in the United States, and I authorize the transfer and use of $4.1 million from the Commodity Credit Corporation of the United States Department of Agriculture for the continuation of the ORVP.

Effective Date: This declaration of emergency shall become effective November 3, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–31146 Filed 12–6–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 001127332–0332–01]

RIN Number 0607–XX60

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2000 Annual Surveys in the Manufacturing Area. The 2000 Annual Surveys consist of the Current Industrial Reports surveys, the Annual Survey of Manufactures, the Survey of Industrial Research and Development, and the Survey of Plant Capacity Utilization. We have determined that annual data collected from these surveys are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Bostic, Jr., Chief, Manufacturing and Construction Division, Census Bureau, on (301) 457–4593.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code (U.S.C.), Sections 61, 81, 182, 224, and 225. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for the year 2002. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all, or a sample of, establishments engaged in the production of the items covered by the following list of surveys.

Survey Title	
MA313F	Yarn Production.
MA313K	Knit Fabric Production.
MA314Q	Carpets and Rugs.
MA315D	Gloves and Mittens.
MA321T	Lumber Production and Mill Stocks.
MA325F	Paint and Allied Products.
MA325G	Pharmaceutical Preparations, except Biologicals.
MA316A	Footwear Production.
MA327C	Refractories.
MA327E	Consumer, Scientific, Technical, and Industrial Glassware.
MA331A	Iron and Steel Castings.
MA331B	Steel Mill Products.
MA331E	Nonferrous Castings.
MA335J	Insulated Wire and Cable.
MA333A	Farm Machinery and Lawn and Garden Equipment.
MA333D	Construction Machinery.
MA333F	Mining Machinery and Mineral Processing Equipment.
MA333L	Internal Combustion Engines.
MA333M	Refrigeration, Air-conditioning, and Warm Air Equipment.
MA333P	Pumps and Compressors.
MA333U	Vending Machines (Coin-Operated).
MA332Q	Antifriction Bearings.
MA334R	Computers and Office and Accounting Machines.
MA335A	Switchgear, Switchboard Apparatus, Relays, and Industrial Controls.
MA335E	Electric Housewares and Fans.
MA335F	Major Household Appliances.
MA335H	Motors and Generators.
MA335K	Wiring Devices and Supplies.
MA334M	Consumer Electronics.
MA334P	Communication Equipment.
MA334Q	Semiconductors, Printed Circuit Boards, and Electronic Components.
MA334B	Selected Instruments and Related Products.
MA334S	electromedical and Irradiation Equipment.

The following list of surveys represent annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Survey Title	
M311H	Animal and Vegetable Fats and Oils (Stocks).
M311J	Oilseeds, Beans, and Nuts (Primary Producers).
M311L	Fats and Oils; (Renderers).
M311M	Animal and Vegetables Fats and Oils (Consumption and Stocks).
M311N	Animal and Vegetables Fats and Oils (Production, Consumption, and Stock).
M313P	Consumption on the Cotton System.
M327G	Glass Containers.
M331J	Inventories of Steel Producing Mills.
M336G	Civil Aircraft and Aircraft Engines.
M336L	Truck Trailers.
MQ311A	Flour Milling Products.
MQ313D	Consumption on the Woolen System and Worsted Combing.
MQ313T	Broadwoven Fabrics (Gray).
MQ315A	Apparel.
MQ314X	Bed and Bath Furnishings.
MQ325A	Inorganic Chemicals.
MQ325B	Fertilizer Materials.
MQ325C	Industrial Gases.
MQ327D	Clay Construction Products.
MQ332E	Plumbing Fixtures.
MQ333W	Metalworking Machinery.
MQ335C	Fluorescent Lamp Ballasts.

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics, such as total

value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information with funding from the National Science Foundation (NSF). The NSF publishes the results in its publication series. Four data items in the survey provide interim statistics collected in the Census Bureau's Economic Censuses. These items (total company sales, total company employment, and total expenditures and Federally-funded expenditures for research and development conducted within the company) are collected on a mandatory basis under the authority of Title 13, U.S.C. Responses to all other data collected for the NSF are voluntary.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the 2000 Annual Surveys under the following OMB Control Numbers: Current Industrial Reports—0607–0206, 0607–0392, 0607–0393, 0607–0395, 0607–0476, and 0607–0776; Annual Surveys of Manufactures—0607–0449; Survey of Industrial Research and Development—3145–0027; and, Survey of Plant Capacity Utilization—0607–0175. We will provide copies of the form upon written request to the Director, Census Bureau, Washington, DC 20233–0001.

Based upon the foregoing, I have directed that the Annual Surveys in the Manufacturing Area be conducted for the purpose of collecting these data.

Dated: December 1, 2000.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 00–31170 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 8, 2000, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers three producers/exporters of subject merchandise. The period of review is November 1, 1998, through October 31, 1999.

We invited interested parties to comment on our preliminary results. We received no comments and have made no changes to our preliminary results for these final results. The final dumping margin is listed in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Richard Rimlinger, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3931 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The 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 (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are at 19 CFR part 351 (1999).

Background

On August 8, 2000, the Department published the preliminary results of the administrative review (65 FR 48464) of the antidumping duty order on fresh garlic from the People's Republic of China (the PRC) (59 FR 59209, November 16, 1994). We invited parties to comment on our preliminary results. We received no comments and have made no changes to our preliminary results for the final results of review.

We have conducted this administrative review in accordance with section 751 of the Act and 19 CFR 351.213.

Scope of Review

The products subject to this antidumping duty administrative review are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Use of Facts Otherwise Available

Our use of facts otherwise available in this review has not changed from the preliminary results, in which we assigned a PRC-wide rate of 376.67 percent since the three respondents did not respond to our requests for information. For a detailed discussion of our application of facts otherwise available, see our preliminary results at 65 FR 48464 (August 8, 2000).

Final Results of the Review

We determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise as the PRC-entity for the period November 1, 1998, through October 31, 1999. The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

Cash-Deposit Requirements

The following deposit rates will be effective upon publication of this notice of final results of administrative review for all shipments of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) For all PRC exporters, all of which were found not to be entitled to separate rates, the cash-deposit rate will be 376.67 percent; and (2) for all non-PRC exporters of subject merchandise from the PRC, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement, pursuant to 19 CFR 351.402(f)(3), could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 and 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. See 19 CFR 351.306 and 19 CFR 354.3.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31235 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Iron Construction Castings from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from respondent Canada Pipe Company Limited (''Canada Pipe''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on iron construction castings (''ICCs'') from Canada. The period of review (''POR'') is March 1, 1999, through February 28, 2000. This review covers imports of ICC from one producer, Canada Pipe.

We have preliminarily determined the dumping margin for Canada Pipe to be 7.07 percent.

EFFECTIVE DATE: December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4243.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (2000).

Background

On March 5, 1986, the Department published in the **Federal Register** (51 FR 7600) the antidumping duty order on ICC from Canada. On March 16, 2000, the Department published in the **Federal Register** (65 FR 14242) a notice of opportunity to request an administrative review of this antidumping duty order. On March 31, 2000, in accordance with 19 CFR 351.213(b)(1), the respondent Canada Pipe requested that the Department conduct an administrative review of its exports of subject merchandise to the United States. We published the notice of initiation of this review on May 1, 2000 (65 FR 25303).

Scope of the Review

The merchandise covered by the order consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010, 7325.10.0020, and 7325.10.0025. The HTS item number is provided for convenience and Customs purposes only. The written description remains dispositive.

Product Comparisons

The ICC exported by Canada Pipe to the United States includes manhole sets, catch basin sets, and trench gates and is the identical merchandise sold by Canada Pipe in its home market in Canada. Therefore, we have compared U.S. sales to contemporaneous sales of identical or similar merchandise in Canada.

Export Price

Section 772(a) of the Act defines export price (''EP'') as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States.

Canada Pipe sells subject merchandise directly to its customers in the United States and uses its affiliate Bibby USA as the importer of record. The sales documentation on the record in this proceeding indicates that Canada Pipe's U.S. sales occurred in Canada between Canada Pipe and the unaffiliated U.S. purchaser. Specifically, we have found the following facts: (1) Bibby USA does not contact the U.S. customers; (2) Bibby Ste-Croix in Canada contacts the U.S. customers; (3) the U.S. customers send the purchase

order to Canada Pipe; (4) Canada Pipe makes all arrangements for shipping and delivery to the U.S. customers directly in Canada; (5) Canada Pipe invoices are issued and the U.S. customers pay Canada Pipe directly in Canada; and (6) Canada Pipe retains title to the merchandise until the point of delivery to the U.S. customers. Given these facts, we preliminarily determine that these sales were made in Canada by Canada Pipe and, thus, should be treated as EP transactions (*see Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, Final Results of Administrative Review,* 65 FR 13359 (March 13, 2000) and accompanying Decision Memorandum at Comment 12; and *Porcelain-on-Steel Cookware from Mexico, Final Results of Administrative Review,* 65 FR 30068 (May 10, 2000) and accompanying Decision Memorandum at Comment 2).

We calculated an EP for all of Canada Pipe's sales because the merchandise was sold directly by Canada Pipe to the first unaffiliated purchaser in the United States prior to importation, and constructed export price (''CEP'') was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage and U.S. duties. We also deducted the amount for billing adjustments from the starting price and added duty drawback, in accordance with section 772(c)(1)(B) of the Act.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, in accordance with section 773(a)(1)(B) of the Act, we based normal value (''NV'') on home market sales, all of which were to unaffiliated customers.

We calculated monthly weighted-average NVs based on ex-works or delivered prices to unaffiliated customers. We made adjustments to the starting price, where appropriate, for billing adjustments. We made deductions, where appropriate, from the starting price for early payment discounts, inland insurance, and inland freight. We made circumstance of sale (''COS'') adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act, for direct selling expenses, including credit expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. With respect to U.S. price and EP transactions, the LOT is the level of the sale to the unaffiliated customer, and with respect to CEP transactions, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level, and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

Canada Pipe reported that during the POR it sold subject merchandise through three channels of distribution in the home market: sales made by Canada Pipe directly to original equipment manufacturers (OEM) (Channel 1), sales from Canada Pipe directly to end-users (Channel 2), and sales from Canada Pipe to distributors (Channel 3). In examining the record, we found that Canada Pipe performs substantially similar selling functions (*e.g.* sales planning, advertising, technical service, etc.) for all three reported channels of distribution. Due to the proprietary nature of the examined selling functions, see *Preliminary Determination: Level of Trade Analysis (Preliminary LOT Memorandum),* dated concurrently with this notice, on file in Room B–099 of the main Department of Commerce Building, the Central Records Unit (''CRU''). Based upon an analysis of the information provided on the record, we conclude that there is no difference in the selling functions performed by Canada Pipe in making sales through these three channels of distribution. Therefore, using the information on the record, the Department preliminarily determines that Canada Pipe makes all sales at the same LOT in the home market.

See Preliminary LOT Memorandum

Canada Pipe reported two channels of distribution (*i.e.* sales to OEMs and sales to distributors) in the United States during the POR. In examining the record, we found that Canada Pipe performs substantially similar selling functions (*e.g.* sales planning, advertising, technical service, etc.) for both reported channels of distribution. Due to the proprietary nature of the examined selling functions, see *Preliminary LOT Memorandum.* Based upon an analysis of the information provided on the record, we conclude that there is no significant difference in the selling functions performed by Canada Pipe in making sales through both channels of distribution. Therefore, the Department preliminarily determines that Canada Pipe makes all sales at the same LOT in the United States market. *See Preliminary LOT Memorandum.*

In order to determine whether sales in the United States are at a different LOT than sales in the home market, we reviewed the selling activities associated with the LOT in each market. We compared Canada Pipe's selling activities for U.S. EP transactions to the selling activities performed for the home market LOT sales by Canada Pipe (*e.g.* sales planning, advertising, technical service, etc.). We found that there was no significant difference in the selling functions performed for Canada Pipe's EP sales than for sales at the home market LOT, sufficient to constitute a difference in LOT. *See Preliminary LOT Memorandum.*

As such, we have preliminarily determined that a LOT adjustment is not appropriate. *See Preliminary LOT Memorandum.*

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a 7.07

percent dumping margin exists for Canada Pipe for the period March 1, 1999, through February 29, 2000. The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would also provide the Department with an additional copy of the public versions of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer specific duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Where the importer-specific assessment rate is above *de minimus,* we will instruct Customs to assess duties on that importer's entries of subject merchandise. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of ICC from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Canada Pipe will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (''LTFV'') investigation or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 14.67 percent, the ''all-others'' rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31236 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmostpheric Administration

Notice of Indirect Cost Rates for the Damage Assessment and Restoration Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: NOAA's Damage Assessment and Restoration Program (DARP) is announcing new indirect cost rates and a policy on the recovery of indirect costs for its component organizations invovled in natural resource damage assesment and restoration activities. These new rates and the DARP policy are effective as of October 1, 2000. More information on these rates and the DARP policy can be found at the DARP web site (www.darp.noaa.gov), or from the address provided below.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 301–713–3038, ext. 193; (FAX: 301–713–4387; e-mail: Eli.Reinharz@noaa.gov), or Linda Burlington, 301–713–1217 (FAX: 301–713–1229; e-mail: Linda.B.Burlington@noaa.gov).

SUPPLEMENTARY INFORMATION: The mission of the DARP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), or physical injuries in Naitonal Marine Sanctuaries under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The NOAA DARP consists of three component organizations: The Damage Assessment Center (DAC) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Services; and the Office of the General Counsel for Natural Resources (GCNR). The DARP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

When addressing NRDA incidents, the costs of the damage assessment are recoverable from responsible parties who are potentially liable for an incident. Costs include direct and indirect costs. Direct costs are costs for activities that are clearly and readily attributable to a specific output. In the context of the DARP, outputs may be associated with damage assessment cases, or may be represented by other program products such as damage assessment regulations. In contrast, indirect costs reflect the costs for activities that collectively support the DARP's mission and operations. For example, indirect costs include general administrative support and traditional overheads. Although these costs may not be readily traced back to a specific direct activity, indirect costs may be allocated to direct activities using an indirect cost distribution rate.

Consistent with Federal accounting requirements, the DARP is required to account for and report the full costs of its programs and activities. Further, the DARP is authorized by law to recover

reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARP's Indirect Cost Effort

In December 1998, the DARP hired the public account firm Rubino & McGeehin, Chartered (R&M), to: (1) Evaluate the cost accounting system and allocation practices; (2) recommend the appropriate indirect cost allocation methodology; and, (3) determine the indirect cost rates for the three organizations that comprise the DARP.

The DARP requested an anlysis of its indirect costs for fiscal years (FY) where cost information was considered adequate to conduct such an analysis. Consequently, indirect cost rates were developed for the DAC and GCNR for FYs 1993 through 1999, and for the RC for FYs 1997 through 1999 (see Table below). The goal was to develop the most appropriate indirct cost rate allocation methodology and rates for each of the DARP component organizations.

R&M concluded that the cost accounting system and allocation practices of the DARP component organizations are consistent with Federal accounting requirements. R&M also determined that the most appropriate indirect allocation method was the Direct Labor Cost Base for all three DARP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. The indirect costs rates that R&M computed for each of the three DARP component organizations were further assessed as being fair and equitable. A report on R&M's effort, their assessment of the DARP's cost accounting system and practice, and their determination respecting the most appropriate indirect cost methodology and rates can be found on the DARP web site at: *www.darp.noaa.gov.* The report is entitled ''Indirect Cost Rates Incurred by the National Oceanic and Atmospheric Administration Damage Assessment and Restoration Program.''

The DARP's Indirect Cost Policy

The DARP will include the costs of program policy work and techniques and methods development in indirect cost pools of its component organizations, but will monitor these activities annually to control costs. The indirect cost pools also include the cost of general management and administrative support and preparedness for spill response work.

The DARP will apply the revised rates recommended by R&M for the respective fiscal years for each of the DARP component organizations as provided in the following table:

DARP unit	Fiscal years (FY) (in percent)						
	FY93	FY94	FY95	FY96	FY97	FY98	FY99
DAC	226.63	247.83	285.33	306.58	250.08	249.81	161.33
RC	N/A	N/A	N/A	N/A	139.70	142.82	203.24
GCNR	107.10	107.24	147.05	286.82	173.30	191.12	239.08

N/A—Not applicable. Rates were not calculated for these years.

The revised rates identified in this policy will be applied to all damage assessment and restoration case costs as of October 1, 2000, using the Direct Labor Cost Base allocation methodology. For cases that have settled and for cost claims paid prior to October 1, 2000, the DARP will not re-open any resolved matters for the purpose of applying the revised rates in this policy. For cases not settled and not cost claims not paid prior to October 1, 2000, costs will be recalculated using the revised rates in this policy. The DARP will use the FY 1999 rates for future fiscal years until year-specific rates can be developed.

Dated: December 1, 2000.

Margaret Davidson,

Assistant Administrator for Ocean Services and Coastal Zone Managmenet.

[FR Doc. 00–31021 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.113000C]

Endangered Species; Permits

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

ACTION: Receipt of application for an enhancement permit (1273); issuance of permits (1254).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from the North Carolina Aquarium Division (NCAD)(1273); NMFS has issued permit 1254 to Central Hudson Gas& Electric Corporation/Dynergy Danskammer, L.L.C.& Dynergy Roseton, L.L.C. (CHGE/DD & DR) (1254).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on January 8, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits (1273, 1254), Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910 301-713-1401.

FOR FURTHER INFORMATION CONTACT: For permits 1273: Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the

Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Fish

Shortnose sturgeon (*Acipenser brevirostrum*).

New Applications Received

Application 1273: The North Carolina Aquarium Division proposes to continue to maintain 17 endangered shortnose sturgeon for the purposes of public education through species enhancement as identified in the Final Recovery Plan for Shortnose Sturgeon.

Permits and Modifications Issued

Permit 1254: Notice was published on June 28, 2000 (65 FR 39869) that Central Hudson Gas& Electric Corporation/ Dynergy Danskammer, L.L.C.& Dynergy Roseton, L.L.C. applied for a scientific research permit (1254). The applicant has requested a scientific research permit to conduct a monitoring study as part of an incidental take permit for the operation of the Roseton and Danskammer Point power plants. The applicant will be collecting larvae, juvenile and adult shortnose sturgeon in various location in the Hudson River between the estuary and River mile 65. Permit 1254 was issued on November 29, 2000, authorizing take of listed species. Permit 1254 expires August 31, 2005.

Dated: December 1, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–31232 Filed 12–6–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers; Grant of Partially Exclusive License

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(b)(1)(i), announcement is made of a prospective partially exclusive license of U.S. Patent No. 5,202,034 entitled ''Apparatus and Method for Removing Water from Aqueous Sludges,'' issued April 13, 1993.

DATES: Written objections must be filed not later than February 5, 2001.

ADDRESSES: United States Army Corps of Engineers Research and Development Center, Cold Regions Research and Engineering Laboratory, ATTN: CEERD–RV–1 (Ms. Sharon Borland), 72 Lyme Road, Hanover, NH 03755–1290.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Borland, ATTN: CEERD–RV–1; (603) 646–4735, FAX (603) 646–4448; Internet *Sharon.L.Borland@erdc.usace.army.mil;* U.S. Army Corps of Engineers Research and Development Center, Cold Regions Research and Engineering Laboratory, 72 Lyme Road, Hanover, NH 03755–1290

SUPPLEMENTARY INFORMATION: Patent No. 5,202,034 entitled ''Apparatus and Method for Removing Water from Aqueous Sludges,'' issued April 13, 1993. The concrete armor unit was invented by Dr. C. James Martel. The United States of America owns the rights to this technology. The United States of America as represented by the Secretary of the Army intends to grant a partially exclusive license for all fields of use, in the manufacture, use, and sale of the patented technology in the territories and possessions of the U.S.A. and Canada, and in the field of use in the pulp and paper industry globally, to 3131807 Canada, Inc., a consortium comprising two companies: Le Groupe STEICA, Inc. of Sherbrooke, Quebec, and BESTH20, Inc. of La Prairie, Quebec, with principal offices at 170, rue des Pivoines, Le Prairie, Quebec, Canada J5R 5J6. Pursuant to 37 CFR 404.7(b)(1)(i), any interested party may file a written objection to this prospective exclusive license agreement.

Richard L. Frenette,

Counsel.

[FR Doc. 00–31184 Filed 12–6–00; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

Dated: December 1, 2000.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Education Longitudinal Study of 2002 (ELS 2002).

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 51,597. Burden Hours: 59,497.

Abstract: Year 2001 field test of 50 schools in five states, students, parents, teachers, and librarians. The main study in Spring 2002 in all 50 states and District of Columbia will constitute the baseline of a longitudinal study of school effectiveness and impact on postsecondary and labor market outcomes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy_Axt at her internet address Kathy_Axt@)ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–31144 Filed 12–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision; JEA Circulating Fluidized Bed Combustor Project, Jacksonville, Duval County, FL

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) has prepared an environmental impact statement (EIS) (DOE/EIS–0289) to assess the environmental impacts associated with a proposed project that would be cost-shared by DOE and JEA (formerly the Jacksonville Electric Authority) under DOE's Clean Coal Technology (CCT) Program. The project would demonstrate circulating fluidized bed (CFB) combustion technology at JEA's existing Northside Generating Station in Jacksonville, Florida. After careful consideration of the potential environmental impacts, along with program goals and objectives, DOE has decided that it will provide approximately $73 million in federal funding support (about 24% of the total cost of approximately $309 million) to design, construct, and demonstrate the CFB technology proposed by JEA.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the CFB combustor project or the EIS, contact Dr. Jan Wachter, National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone: (412) 386–4809, fax: (412) 386–4726, or e-mail: jan.wachter@netl.doe.gov. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone: (202) 586–4600, leave a message at (800) 472–2756, or fax: (202) 586–7031.

SUPPLEMENTARY INFORMATION: DOE has prepared this Record of Decision pursuant to Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508) and DOE NEPA regulations (10 CFR Part 1021). This Record of Decision is based on DOE's final EIS for the JEA Circulating Fluidized Bed Combustor Project (DOE/EIS–0289, June 2000).

NEPA Strategy for the Clean Coal Technology Program

For the CCT Program, DOE developed a strategy that is consistent with CEQ and DOE regulations for compliance with NEPA and which includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a project. This strategy, called tiering (40 CFR 1508.28), refers to the consideration of general issues in a broader EIS (*e.g.,* for the CCT Program), followed by more focused environmental impact statements or other environmental analyses that incorporate by reference the general issues and concentrate on those issues specific to the proposals under consideration.

The DOE strategy has three principal elements. The first element involved preparation of a comprehensive Programmatic EIS for the CCT Program (DOE/EIS–0146, November 1989) to address the potential environmental consequences of widespread commercialization of each of 22 successfully demonstrated clean coal technologies.

The second element involved preparation of a pre-selection, project-specific environmental review of proposed CCT projects based on project-specific environmental data and analyses in accordance with DOE NEPA regulations (10 CFR 1021.216). For the proposed CFB combustor project, JEA supplied DOE with environmental data as part of their proposal. DOE reviewed the potential site-specific environmental, health, safety, and socioeconomic issues associated with the proposed project before selecting JEA's proposal for further consideration. In its review, DOE analyzed the environmental advantages and disadvantages of the proposal and alternative sites and processes reasonably available to JEA.

The third element consists of preparing site-specific NEPA documents for each selected project. For the JEA proposed project, DOE determined that an EIS should be prepared. As part of the overall NEPA strategy for the CCT Program, the JEA EIS draws upon the Programmatic EIS and pre-selection environmental reviews.

On November 13, 1997, DOE published in the **Federal Register** (62 FR 60889) a Notice of Intent to prepare the JEA EIS and hold a public scoping meeting. The Notice of Intent invited comments and suggestions on the proposed scope of the EIS, including environmental issues and alternatives, and encouraged participation in the NEPA process. DOE held the scoping meeting in Jacksonville, Florida, on December 3, 1997. DOE received 3 oral responses and 20 written responses from interested parties. The responses helped DOE to establish the issues to be analyzed in the EIS and the level of analysis warranted for each issue.

In August 1999, DOE issued the draft EIS for public review and invited comments on the adequacy, accuracy, and completeness of the EIS. As part of the review, DOE held a public hearing in Jacksonville, Florida, on September 30, 1999. DOE received 1 oral comment and 59 written comments, which helped to improve the quality and usefulness of the EIS. In June 2000, DOE issued the final EIS, which considered and, as

appropriate, incorporated public comments on the draft EIS. Among the issues raised in the comments were concerns about (1) reliability of CFB combustion technology in meeting expected air emissions rates for particulate matter, sulfur dioxide (SO_2), and oxides of nitrogen (NO_X), in view of limited large-scale operating experience; (2) air emissions of heavy metals, radionuclides, carcinogenic chemicals, and carbon dioxide (CO_2); (3) potential effects of cooling water discharge on the St. Johns River; (4) potential entrainment of juvenile sea turtles, such as endangered green sea turtles, in the cooling water intake; (5) potential effects on manatees and other endangered species; (6) potential effects on Essential Fish Habitat, such as estuarine emergent wetlands; (7) potential effects on cultural resources; (8) disposal of ash, including whether the planned ash marketing would be successful; (9) noise levels from construction, operation, and rail transportation; (10) electromagnetic fields; and (11) traffic congestion.

Project Location and Description

The site for the proposed project is located in Jacksonville, Florida, about 9 miles northeast of the downtown area, at JEA's existing Northside Generating Station. This 400-acre industrial site is situated along the north shore of the St. Johns River, approximately 10 miles west of the Atlantic Ocean. The local terrain is flat and there is a mix of industrial, commercial, residential, and agricultural land use in the vicinity. The industrial 1,650-acre St. Johns River Power Park borders Northside Generating Station to the northeast, and the 46,000-acre Timucuan Ecological and Historic Preserve borders the site to the east. Blount Island, located immediately to the southeast in the St. Johns River, is a major port with facilities for docking, loading, and unloading large ocean-going vessels. The most striking environmental feature associated with the area is the nearby presence of estuarine salt marsh backwaters of the St. Johns River.

Northside Generating Station, which currently employs 265 people, has operated since November 1966 when the 297.5-megawatt (MW) Unit 1 came on-line. The 297.5-MW Unit 2 and the 564-MW Unit 3 started operation in March 1972 and June 1977, respectively. Unit 2 has been out of service since 1983 because of major boiler problems associated with the volume of its furnace being inadequate to accommodate the heat generated. The Unit 2 steam turbine is currently idle and the Unit 2 furnace and stack have recently been dismantled and removed. Units 1 and 3 can burn both natural gas and oil [No. 6 fuel oil or No. 2 fuel oil (diesel)]. Units 1 and 3 have no air pollution control with the exception of low-NO_X burners on Unit 3. Once-through cooling water is withdrawn from and discharged into the St. Johns River. Existing facilities currently occupy about 200 acres of the 400-acre property. The property contains a number of wetland areas, especially in the perimeter areas.

The proposed project would repower the idle Unit 2 steam turbine to generate nearly 300 MW of electricity using a new coal- and petroleum coke-fired combustor to demonstrate CFB combustion technology. The new combustor would be located adjacent to the existing Unit 3. Piping and related infrastructure would be constructed to link the combustor with the Unit 2 steam turbine. The proposed project and related infrastructure would occupy about 75 acres of the Northside Generating Station property.

CFB combustion technology is an advanced method for burning coal and other fuels efficiently while removing pollutants from air emissions inside the sophisticated combustor system. CFB technology provides flexibility in utility operations because a wide variety of solid fuels can be used, including high-sulfur, high-ash coal and petroleum coke. In a CFB combustor, coal or other fuels, air, and crushed limestone or other sorbents are injected into the lower portion of the combustor for initial burning of the fuel. The combustion actually occurs in a bed of fuel, sorbent, and ash particles that are fluidized by air from nozzles in the bottom of the combustor. The air expands the bed, creates turbulence for enhanced mixing, and provides most of the oxygen necessary for combustion of the fuel. As the fuel particles decrease in size through combustion and breakage, they are transported higher in the combustor where additional air is injected. As the particles continue to decrease in size, unreacted fuel, ash, and fine limestone particles are swept out of the combustor, collected in a particle separator (also called a cyclone), and recycled to the lower portion of the combustor. This is the ''circulating'' nature of the combustor. Drains in the bottom of the combustor remove a fraction of the bed composed primarily of ash while new fuel and sorbent are added. The combustion ash is suitable for beneficial uses such as road construction material, agricultural fertilizer, and reclaiming surface mining areas.

The heated combustor converts water in tubes lining the combustor's walls to high-pressure steam. The steam is then superheated in tube bundles placed in the solids circulating stream and the flue gas stream. The superheated steam drives a steam turbine-generator to produce electricity in a conventional steam cycle.

The injected limestone could capture up to 98% of the sulfur impurities released from the fuel. When heated in the CFB combustor, the limestone, consisting primarily of calcium carbonate ($CaCO_3$), converts to calcium oxide (CaO) and CO_2. The CaO reacts with SO_2 from the burning fuel to form calcium sulfate ($CaSO_4$), an inert material that is removed with the combustion ash. The combustion efficiency of the CFB combustor allows the fuel to be burned at a relatively low temperature of about 1,650EF, thus reducing NO_X formation by approximately 60% compared with conventional coal-fired technologies. Greater than 99% of particulate emissions in the flue gas are removed downstream of the combustor by either an electrostatic precipitator or a fabric filter (baghouse).

In addition to the CFB technology, the proposed project would use a polishing scrubber in combination with the CFB combustor to attain a 98% SO_2 removal rate. The polishing scrubber is a conventional scrubbing system that would use lime in a dry flue gas desulfurization process downstream of the combustor to convert SO_2 chemically to calcium sulfite and calcium sulfate. It is called a polishing scrubber because the CFB combustor would remove 85–90% of the SO_2 and the polishing scrubber would remove or ''polish off'' the remainder. This design is driven by economic rather than technical considerations (*i.e.,* the CFB combustor alone could achieve a 98% SO_2 removal rate but the operating cost would be greater).

Another addition to the CFB combustion technology is that the proposed project would use a selective non-catalytic reduction system to further reduce NO_X emissions. Aqueous ammonia, the reagent for this system, would be injected into the CFB combustor exhaust gas to convert NO_X emissions to nitrogen gas and water via a chemical reduction reaction. Atmospheric emissions of ammonia can occur if the amount supplied to reduce NO_X in the flue gas is not used up (ammonia slip). However, excess ammonia in the stack gas can typically be reduced by optimizing the amount of ammonia that is injected. For the proposed project, stack emissions of

ammonia slip would not exceed 40 ppm.

A CFB combustor has several advantageous operating characteristics that differentiate it from more conventional technologies. Because the fuel and sorbent being added represent only a small fraction of the total fuel and sorbent available in the bed, the combustor reacts more slowly to variations in fuel or sorbent quality. Steam characteristics and furnace temperatures are more uniform, which usually results in easier operation, fewer upset conditions and emission spikes, and more consistency in the quality of combustion ash. As a consequence of bed fluidization and recycling of particles back to the lower portion of the combustor, enhanced mixing is achieved at more uniform temperatures, which allows more complete combustion and sorbent reaction. Another advantage of the combustor is the efficient transfer of heat due to the physical contact between the particles in the bed and the heat exchanger tubes in the walls. The technology also has lower operating and maintenance costs and a shorter ''down time'' for maintenance than conventional coal-fired technologies.

During the demonstration, Unit 2 would be operated on several different types and blends of coal and petroleum coke to explore the flexibility of the CFB technology. The coal would be transported by ship (from areas such as Columbia and Venezuela), by train (primarily from the central Appalachian region such as West Virginia and eastern Kentucky), and by a combination of train and ship (train from West Virginia and eastern Kentucky to Newport News, Virginia, and ship from Newport News to Jacksonville). The petroleum coke would be transported by ship from oil refineries in Venezuela and the Caribbean region. Limestone for the CFB combustor probably would be transported by ship from the Caribbean region and the Yucatan Peninsula of Mexico.

Alternatives

Congress directed DOE to pursue the goals of the CCT Program by means of partial funding of projects owned and controlled by nonfederal-government sponsors. This statutory requirement places DOE in a much more limited role than if the federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the project. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted because the agency must focus on alternative ways to accomplish its purpose that reflect both the application before it and the function the agency plays in the decisional process. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

Based on the foregoing principles, the only reasonable alternative to the proposed action is the no-action alternative, including three scenarios that could reasonably be expected to result as a consequence of the no-action alternative. Other alternatives that did not meet the goals and objectives of the CCT Program or of the applicant were dismissed from further consideration.

Proposed Action

The Department's proposed action is to provide approximately $73 million (about 24% of the total cost of approximately $309 million) for the design, construction, and operation of facilities to demonstrate CFB combustion technology at JEA's Northside Generating Station in Jacksonville, Florida. The new CFB combustor would use coal and petroleum coke to generate nearly 300 MW of electricity by repowering the existing Unit 2 steam turbine (the 297.5–MW unit that has been out of service since 1983). In doing so, the proposed project is expected to demonstrate emission levels of SO_2, NO_X, and particulate matter that would be lower than Clean Air Act limits while at the same time producing power more efficiently and at less cost than conventional technologies using coal. The proposed project would demonstrate CFB technology for electric power generation at a size sufficient to allow utilities to make decisions regarding commercialization of the technology.

In addition, JEA plans to repower the currently operating Unit 1 steam turbine without cost-shared funding from DOE. The Unit 1 steam turbine would be essentially identical to the turbine for Unit 2 and would be repowered about 6 to 12 months after the Unit 2 repowering. Although the proposed project consists of only the Unit 2 repowering (because DOE would provide no funding for the Unit 1 repowering), the JEA EIS evaluates the Unit 1 repowering as a related action.

JEA's management has established a target of a 10% reduction in annual stack emissions of each of 3 pollutants (SO_2, NO_X, and particulate matter) from Northside Generating Station (Units 1, 2, and 3), as compared to emissions during a recent typical 2-year operating period (1994–95) of the station (Units 1 and 3). Also targeted for a 10% reduction is the total annual groundwater consumption of Northside Generating Station, as compared to 1996 levels. These reductions are to be accomplished while increasing the total annual energy output of the station.

JEA, the project participant, is responsible for obtaining all applicable permits for the proposed project and would comply with all applicable laws, regulations, and ordinances. JEA plans to enter into a contract with Foster Wheeler Corporation, which would perform the design, engineering, procurement, and construction of the CFB combustor and air emissions control equipment. JEA and Foster Wheeler conceived and proposed the technology in response to the DOE solicitation under the CCT Program; DOE's role is limited to providing the cost-shared funding for the proposed project. In addition, DOE and JEA have different objectives to be attained through the proposed project: DOE's objective is to demonstrate CFB technology, while JEA's intent is to meet its future demand for electricity.

No Action

Under the no-action alternative, DOE would not provide cost-shared funding for the proposed CFB combustor project. The Programmatic EIS for the CCT Program (DOE/EIS–0146) evaluated the programmatic consequences of no action. Under the no-action alternative for the proposed project, three reasonably foreseeable scenarios could result.

First, JEA could repower the existing Unit 2 steam turbine without DOE funding, thereby accepting more of the financial risk associated with demonstrating the CFB combustor (at its own risk, JEA has in fact begun initial construction activities without DOE funding). JEA would also proceed with the related action of repowering Unit 1. Under this scenario, construction materials and activities and project operations would be the same as for the proposed project. The same amount of electricity would be generated. Fuel requirements would be similar except that the blend of coal to petroleum coke might be slightly different, particularly during the first 2 years of operation. Under this scenario, more of the solid fuel used could be petroleum coke.

Second, rather than repowering Unit 2, JEA could construct and operate a new gas-fired combined cycle facility at Northside Generating Station or at one of its other existing power plants. The natural gas would drive a gas combustion turbine and the heat from

combustion would be used to produce steam that would drive a steam turbine. Based on modeling projections by JEA, the facility would be expected to generate approximately 230 MW of electricity.

Under this scenario, Northside Unit 1 would remain in its current oil-and gas-fired configuration, and JEA would not proceed with the related action of repowering Unit 1. Based upon the projected cost of natural gas and the combined cycle unit efficiency, the cost of generating electricity at the new combined cycle facility was projected to be in the same range as the existing oil-fired units. This resulted in the new combined cycle unit being projected to operate at about a 60% capacity factor (the percentage of electricity actually generated by a unit during a year compared with the unit's maximum capacity). The difference in generating output between the proposed combined cycle unit operating at a 60% capacity factor and the two proposed CFB combustors operating at a 90% capacity factor would be supplied by operating the existing units at higher capacity factors, by purchasing electricity from other utilities, or most likely by a combination of these two options. If the existing Northside units were to remain operating at their historical levels, then the addition of a combined cycle unit would result in an increase in JEA emissions. The more likely scenario is that the existing units would operate at higher capacity factors than in recent years, resulting in a larger increase in emissions compared with historical levels and an even larger increase of most pollutants compared with JEA emissions expected following the repowering of Units 1 and 2 with CFB combustors. Therefore, even though air emissions of most pollutants from the combined cycle facility alone would be less than corresponding emissions from a CFB combustor alone, the emissions from the existing oil-fired units would result in greater overall emissions under the combined cycle facility scenario.

Construction activities and operations would be similar for the gas-fired combined cycle facility and the CFB combustors but with notable differences related to fuel, sorbent, and ash handling and storage facilities. Under the combined cycle facility scenario, natural gas would be delivered by pipeline; no coal, petroleum coke, limestone, or lime would be used. No combustion ash would be generated. This scenario would not contribute to the CCT Program goal of demonstrating advanced, more efficient, economically feasible, and environmentally acceptable coal technologies.

Third, rather than repowering Unit 2, JEA could purchase electricity from other utilities to meet JEA's projected demand. Under this scenario, no construction activities or changes in current operations would occur within the JEA system of power plants, including Northside Generating Station. JEA would not proceed with the related action of repowering Unit 1. There could be construction activities or changes in operations at the other utilities providing electricity to JEA if the needed electricity capacity were not already available.

This scenario would not contribute to the CCT Program goal, would not provide employment for construction workers in the Jacksonville area, and would not result in reductions of atmospheric emissions or groundwater use at Northside Generating Station. Moreover, existing Units 1 and 3 might be required to operate at capacity factors greater than historical levels if JEA were unable to purchase sufficient electricity from other utilities. Under those circumstances, annual air emissions and groundwater consumption would increase.

Major Environmental Impacts and Mitigation Measures

Potential impacts that could result from construction and operation of the proposed project are evaluated in the JEA EIS for resource areas including air quality, surface water, groundwater, floodplains and wetlands, ecological resources, noise, transportation, solid waste, and cultural and socioeconomic resources. The following summary provides key findings for areas of potential concern.

Air Quality

A computer-based air dispersion model was used to estimate maximum increases in ground-level concentrations of SO_2, nitrogen dioxide (NO_2), and particulate matter that would occur at any location as a result of emissions from the CFB combustor and limestone dryers for the proposed project (the Unit 2 repowering). Results indicate that maximum modeled increases are always less than 15% of their corresponding Prevention of Significant Deterioration (PSD) Class II increments (standards in the ambient air for increases in pollutant concentrations). One set of allowable increments exists for Class II areas, which cover most of the United States, and a much more stringent set of allowable increments exists for Class I areas, which include many national parks, monuments, and wilderness areas. Maximum concentrations generally occur at locations along, or very close to, the site boundary, often within 0.6 mile of the proposed CFB combustor stack. Dispersion of pollutants would reduce atmospheric concentrations at the nearest PSD Class I areas (more than 30 miles from the proposed facility) to only a small fraction of the maximum modeled increases near the site. The increases in pollutant concentrations at the nearest PSD Class I areas would be expected to be only small fractions of the corresponding Class I increments.

The combination of the proposed project and related action would result in emissions from the new 495-ft twin-flued stack that would be twice those considered in the analysis of the proposed project alone. However, as part of the related action, the elimination of emissions from the existing 250-ft stack serving Unit 1 would more than compensate for the added emissions. Compared to existing emissions at Northside Generating Station, a net decrease in maximum hourly emissions of SO_2, NO_X, and particulate matter would result from the addition of the repowered Unit 2 and the limestone dryers and the replacement of the existing Unit 1 with the repowered Unit 1. Therefore, a decrease in ground-level concentrations of these pollutants would be expected most of the time at most locations in the surrounding area (the overall effect would be beneficial). However, pollutant concentrations would not decrease for all averaging times at all locations; maximum ground-level concentrations at some locations could increase because the characteristics and location of the proposed new stack would be different from those of the stack currently serving Unit 1. The net impacts could be positive or negative on any particular day at any particular location.

Air dispersion modeling also was used to evaluate maximum adverse impacts possible from the proposed project in conjunction with the related action. Maximum modeled increases in ground-level concentrations are very similar to those for the proposed project alone. Maximum increases are always less than 15% of their corresponding Class II increments. Because the nearest PSD Class I areas are more than 30 miles away, pollutants from Northside Generating Station would be well mixed in the atmosphere, and stack characteristics would have little effect on ground-level pollutant concentrations in these areas. Therefore, a net decrease in pollutant emissions resulting from the proposed project in conjunction with the related action would be expected to improve air

quality, albeit by a very small amount, at the nearest PSD Class I areas.

Regarding potential cumulative air quality impacts, results of modeling regional sources and the proposed project indicate that no exceedances of national or state ambient air quality standards would be expected if the proposed project were implemented. Florida standards are the same as the National Ambient Air Quality Standards (NAAQS) except for annual and 24-hour standards for SO_2, for which the Florida standards are more stringent. During the 6-to 12-month transition period before the Unit 1 repowering, the 24-hour average SO_2 concentration is estimated to be as high as 97% of the corresponding Florida standard. This large concentration results from aerodynamic downwash effects caused by the proposed 200-ft tall combustor structure that would induce downward motion on the exhaust gas emitted from the 250-ft stack serving the existing Unit 1 and the 350-ft stack serving the existing Unit 3 (exhaust gas from the proposed 495-ft CFB combustor stack would not be subjected to appreciable downwash because the stack is taller). During the 6- to 12-month transition period before the Unit 1 repowering, JEA has committed to reduce maximum hourly SO_2 emissions from the existing Unit 1 by nearly 93% when operations commence for the proposed project. This reduction, which would be accomplished by using natural gas and fuel oil with an SO_2 emission rate averaging no more than 0.143 lb/MBtu (effectively, a blend with a sulfur content averaging no more than 0.13%), would assure that the maximum 24-hour average SO_2 concentration would not exceed the Florida standard.

Estimated SO_2 concentrations for other averaging periods are less than 60% of their respective standards. The annual average NO_2 concentration is less than 40% of its NAAQS. The 24-hour and annual averages of particulate matter are less than 65% of the NAAQS, even though ambient background particulate concentrations for both averaging periods are over 40% of the NAAQS.

Results of modeling regional sources and the proposed project in conjunction with the related action of repowering the existing Unit 1 indicate that maximum concentrations are always less than corresponding concentrations without the related action. For example, the 24-hour average SO_2 concentration for regional sources and the proposed project in conjunction with the related action is 91% of the Florida standard, compared to 97% for regional sources and the proposed project without the related action.

Ozone (O_3) concentrations during 1993–97 at the nearest monitor located about 5 miles north-northwest of Northside Generating Station were always less than 90% of the 1-hour NAAQS. Because changes in NO_X and volatile organic compound (VOC) emissions from the proposed project alone or in conjunction with the related action would be less than 1% of emissions in Duval County, they would not be expected to lead to any exceedances of the 1-hour NAAQS for O_3 at that monitoring location.

Regarding toxic air pollutants, findings indicate that the proposed project alone or in conjunction with the related action would not lead to any exceedances of, or close approaches to, guideline values for noncarcinogenic effects from toxic materials. Further, including both the inhalation and ingestion pathways, the maximum annual cancer risk to a member of the public resulting from dioxins, furans, and other carcinogenic substances emitted during operations was estimated to be less than 1 in 1 million (risk from lifetime of exposure estimated to be less than 3 in 100,000); given the upper-bound assumptions in the estimate, the risk would probably be less.

Water Resources

Because Unit 2 has not operated since 1983, the proposed project would increase the demand for cooling water. After Unit 2 is repowered, the demand by the entire 3-unit plant would be approximately the same as when the three units operated together from approximately 1978 until 1980. The sustained flow of the back channel of the St. Johns River would not be depleted by this diversion because nearly all of the withdrawn cooling water would be returned to the river after passing through the condensers. The amount of heat discharged to the St. Johns River would also increase as a consequence of the proposed project. However, the size of the thermal plume would not increase because simultaneous operation of all three units would increase the discharge velocity and enhance mixing.

Operation of the proposed project would reduce by 10% the groundwater consumption from the upper Floridan aquifer by Northside Generating Station, which would decrease the rate of decline of the potentiometric surface of that aquifer. As a result, more groundwater would be available to local users, and water quality of the aquifer would be stabilized because of reduced influx of brackish or saline groundwater from deeper aquifers.

Floodplains and Wetlands

No impacts from flooding would be expected to occur, and proposed activities would have a negligible effect on floodplain encroachment. A category 3, 4, or 5 hurricane in Jacksonville is a low-probability event that, if it occurred, would have serious consequences for Northside Generating Station. Although the effects of storm surge and waves that would occur along the beaches would partially be mitigated at Northside Generating Station by (1) its inland location, (2) the presence of the beach ridge along the dune line, and (3) Blount Island, the first floor of the station could be inundated by this unlikely event.

Ecological impacts to wetlands from the proposed project would be minor because no more than 1.8 acres of isolated hardwood wetland habitat would be lost during construction of the ash storage area, and disturbance of salt marsh habitats during construction of the solid fuel delivery system would be negligible. Wetlands associated with the upper salt marsh communities would not be measurably affected because nearly all of the conveyor system for solid fuel delivery would span these habitats using existing structures and would involve no clearing or earthmoving activities. Although some pilings might need to be installed at the upper fringes of the salt marsh and in San Carlos Creek, any impacts resulting from piling installation would be very localized and temporary and should not measurably affect the normal structural and functional dynamics of the salt marsh and nearby estuarine ecosystems.

As a mitigation measure to offset the loss of 1.8 acres of wetlands, JEA would purchase slightly greater than 3 acres of wetlands from an offsite mitigation bank and would restore 1 acre of salt marsh, which together would result in a net gain in the amount of wetlands. In addition, JEA plans to set aside and preserve 15 acres of undisturbed, uplands maritime oak hammock along the west bank of San Carlos Creek. By preserving the land, JEA would maintain habitat for wildlife, help protect the water quality of the creek, and leave a high-quality forested buffer area in a developing industrial area.

Ecological Resources

With regard to threatened and endangered species, manatees are of the most concern. Impacts on this species from construction of a new fuel and limestone unloading dock are unlikely because manatees probably would not

regularly frequent the dock area due to the paucity of submerged vegetation such as seagrasses and emergent cordgrasses in the immediate vicinity of the dock. Potential impacts resulting from operational activities such as docking of vessels would also be unlikely. The potential for manatees to be trapped and pinned between the dock and a vessel are minimal because the dock would be supported by widely spaced support pilings rather than consisting of one long continuous structure. Because manatees generally avoid swift currents and prefer slow-moving or stagnant water, they would not frequent the main discharge area in the back channel of the St. Johns River where currents are relatively swift. In addition, it is very unlikely that all units for both the St. Johns River Power Park and Northside Generating Station would be shut down simultaneously, thereby minimizing the probability that manatees would be harmed by a cold shock event.

Four or five juvenile loggerhead, Kemps Ridley, and/or green sea turtles (a listed endangered species) became trapped in the Northside Generating Station intake basin on one occasion during summer 1997 (the turtles were released unharmed). In order to prevent any further occurrences of juvenile turtles entering the intake structure, where they might become trapped, JEA installed on the intake trash rakes a finer grid of mesh bars (welded wire screen on 6-in. centers contrasted to the old 12-in. centers). The denser grid has excluded turtles of sizes similar to those observed from entering the intake basin and becoming trapped.

Cultural Resources

Because the area in the vicinity of the proposed project is rich in archaeological resources and the excavation of undisturbed land could affect important archaeological artifacts, both a cultural resources assessment survey of the proposed project site and a follow-up Phase II investigation were conducted. These studies found that there are no potentially significant historic or archaeological sites located in the area that would be disturbed by the proposed project. Under the terms of the Submerged Lands & Environmental Resource Permit that would be issued by the Florida Department of Environmental Protection (FDEP), JEA would be required to notify the appropriate agencies [the St. Johns River Water Management District, the FDEP, and the State Historic Preservation Officer] immediately upon discovery of any archaeological artifacts on the project site [Rule 62–330.200(2)(c), Florida Administrative Code].

Socioeconomic Resources and Environmental Justice

Construction and operation of the proposed project would not result in major impacts to population, employment, income, housing, local government revenues, or public services in Duval County. The percentage of Blacks and Asians in Duval County is greater than for Florida as a whole. Because there are relatively few people in poverty or Blacks and Asians living in the census tracts surrounding the proposed site, no disproportionately high and adverse impacts to low income or minority populations would occur. In particular, because of the relatively low number of minority and low-income residents in the vicinity of the proposed project, very few members of these groups would experience the adverse effects associated with increased road and rail traffic and related noise.

Transportation

Construction-induced traffic during the peak traffic hour would not exceed available capacity except for the section of Heckscher Drive from State Route 9A to Drummond Point (just west of Eastport Road). Without mitigation the congestion experienced on this segment would be significant. Accordingly, JEA has committed to encourage carpooling and suggest alternate routes to and from the site. The increased traffic would also result in noticeable congestion on New Berlin Road, especially at the intersection of Ostner and New Berlin Roads. To avoid a significant impact, JEA has committed to monitor traffic at the above-mentioned intersection and to place a police officer at the intersection to direct traffic during peak times, if needed. Should the presence of a police officer prove inadequate to control project-induced traffic, JEA has further committed to pursue authorization of a temporary traffic signal at that intersection.

Based on current projections, marine transportation would be the most economic means of delivering solid fuel and limestone for the proposed project. Consequently, no more than one 90-car train per week would be required to transport coal for the proposed project, and this could be offset by decreased rail deliveries and corresponding increased waterborne deliveries for operations at the St. Johns River Power Park. However, in the less likely event that all necessary coal would be transported by rail, up to 3 additional trains per week would be required for a total of 6 new one-way trips by 90-car unit trains. If all coal were transported by train, the 6 new one-way train trips per week would exacerbate impacts associated with noise, vibration, and blocked roads at on-grade rail crossings resulting from existing train traffic. These impacts are a source of concern for residents of Panama Park, North Shore, and San Mateo. Project-induced train traffic would increase total movement on the CSX line paralleling U.S. 17 by about 5% and would increase traffic on the spur line from U.S. 17 to the St. John River Power Park and Blount Island by approximately 8%. Additional train traffic could be minimized by relying more heavily on barges and ships for coal transport. As mentioned earlier, economic projections indicate that the marine fuel delivery mode is more likely.

Noise

During construction of the proposed project, noise levels would increase from the present operational levels. Construction would primarily occur adjacent to the existing turbine building. The noisiest periods of construction would be during steam blowouts and during the operation of a pile driver and other construction equipment. Except possibly during steam blowouts and possibly during operation of equipment used to construct a nearby segment of a conveyor, construction noise should not appreciably change the background noise of nearby residences, interfere with outside voice communications, or exceed the limitations of Rule 4, Noise Pollution Control, promulgated by the Jacksonville Environmental Protection Board (1995). This rule limits daytime construction noise levels to 65 dB(A) at residential property.

JEA likely would perform continuous, low-pressure, high-velocity steam blowouts. Although this activity would be conducted around the clock, noise levels at the nearest residences should be below levels of concern, because this type of blowout, uses low-pressure steam rather than high-pressure steam. However, because JEA's steam blowout plan has not been finalized, JEA has committed to installing mufflers if high-pressure steam blowouts are conducted, or, if mufflers are not installed, JEA has committed to measuring the noise levels at the nearest residences and ensuring that the levels would conform to the Noise Pollution Control ordinance limits.

The project-induced increased movement of trains through the local area would be accompanied by high-decibel train whistles and rattling rail cars. Train noise is a source of concern for residents of Panama Park, North

Shore, and San Mateo. One local resident has reported the level of train whistles as being 108 dB(A) and the level of rattling rail cars as being up to 85 dB(A). As mentioned in the transportation section above, additional train noise could be minimized by relying more heavily on barges and ships for coal transport.

Waste Management

The preferred alternative for management of the combustion ash would be to sell it as a by-product to offsite customers. An aggressive marketing program would be implemented to maximize the quantity sold. If more than approximately 70% of the ash could be sold over the 30-year lifetime of Northside Generating Station, the 40-acre storage site would be sufficient for complete containment, and disposal of the material would not be an issue. Additional permanent disposal space would be required if JEA cannot sell more than 70% of the ash. In the unlikely event that none can be sold, an additional 80 to 100 acres of disposal space would be required over the 30-year operating life of the facility. If additional space were required, potential locations for disposal include the property directly north of the Northside property, available land at the St. Johns River Power Park, and existing offsite landfills. Four large landfill sites that are permitted to dispose of nonhazardous industrial wastes have been identified in northeastern Florida and southeastern Georgia.

No-Action Alternative

Under the no-action alternative, DOE would not provide cost-shared funding for the proposed project; three reasonably foreseeable scenarios could result (see Alternatives above). Under the first scenario, in which JEA would repower the existing Unit 2 steam turbine without DOE funding, environmental impacts would generally be very similar to those of the proposed project. However, more of the solid fuel used could be petroleum coke, which would be brought to the site by waterborne transport. If current projections about the economic advantages of marine transportation change and rail transport is the primary means of moving coal to the project site, the increased use of petroleum coke under this scenario would result in less train traffic and more marine traffic to deliver the fuel as compared with the proposed project. As a result, there would be fewer train trips through the neighborhoods in the vicinity of Northside Generating Station, which would reduce potential problems with noise, vibration, and blocked roads at on-grade rail crossings.

Under the second scenario, in which JEA would construct and operate a new gas-fired combined cycle facility at Northside Generating Station or at one of their other existing power plants, there would be no train, marine, or truck traffic associated with fuel and sorbent delivery. No combustion ash would be generated and there would be no truck traffic to remove ash from the site. Consequently, impacts related to traffic noise and disruptions would be minimized. Air emissions would be expected to increase compared with historical levels because of the operation of the combined cycle facility in addition to the existing Northside units operating at the same or higher capacity factors. Therefore, air emissions under this scenario would generally be greater than those for the proposed project. Changes in concentrations of pollutants in the ambient air would depend on the location and project-specific nature of the facility (*e.g.*, stack height and exit temperature and velocity). Impacts to cultural resources could be less if there were less disruption to construct conveyors and other facilities on previously undisturbed land; conversely, impacts could be greater if more onsite and/or offsite land were disturbed because of a need to construct or upgrade a pipeline supplying natural gas to the facility.

Under the third scenario, in which JEA would purchase electricity from other utilities to meet JEA's projected demand, there would be no change in current environmental conditions at the site, and the impacts would remain unchanged from the baseline conditions. It is possible that existing Units 1 and 3 would operate at capacity factors greater than historical levels if JEA were unable to purchase sufficient electricity from other utilities. Consequently, annual air emissions and groundwater consumption would increase. In addition, some impacts to resources could result in the geographical area of the other utilities, particularly if a new facility were built to meet the JEA demand or if additional fuel were transported to the other site or sites to generate additional electricity. The level of any such impacts would depend on the project-specific characteristics of any facility construction, the fuel required by the facility, and the affected resources in the area.

Environmentally Preferred Alternative

The environmentally preferred alternative would likely be the first scenario under the no-action alternative. This scenario is nearly identical to the proposed project [*e.g.*, in both cases there would be a 10% reduction in annual stack emissions of each of 3 pollutants (SO_2, NO_X, and particulate matter) from Northside Generating Station and a 10% reduction in the total annual groundwater consumption of the station]. Consequently, under the first scenario, environmental impacts would be very similar to those of the proposed project except that there could be less train traffic and more ship and barge traffic to deliver the fuel because more of the solid fuel used could be petroleum coke. Assuming that there would be fewer train trips, the potential impacts associated with train noise, vibration, and blocked crossings would be reduced under the first scenario.

Under the second scenario of the no-action alternative, even though air emissions of most pollutants from the combined cycle facility alone would be less than corresponding emissions from a CFB combustor alone, the emissions from the existing oil-fired units would result in greater overall emissions compared to those of the proposed project. This environmental drawback would tend to outweigh the scenario's environmental benefits (*e.g.*, no train-, ship and barge-, or truck-related noise from traffic associated with fuel and sorbent delivery or ash removal).

The third scenario of the no-action alternative would not result in reductions of atmospheric emissions or groundwater use at Northside Generating Station. Moreover, there could be potential impacts from construction activities or changes in operations at the other utilities providing electricity to JEA if the electricity were not already available. Therefore, this scenario is not considered the environmentally preferred alternative.

Comments on the Final EIS

DOE received comments from the Marine Mammal Commission; the Florida Department of Transportation; the Florida Department of State, Division of Historical Resources; the United States Environmental Protection Agency (EPA), Region 4; and a member of the local community.

The Marine Mammal Commission expressed concern about potential harm to northern right whales from collisions with ocean-going vessels, and recommended that DOE consult with the National Marine Fisheries Service to assess what mitigation measures might be needed to protect northern right whales from injuries due to project-related vessel traffic. The Commission

also expressed concern about potential harm to manatees during routine delivery of fuel to the plant, and recommended that DOE consult with the U.S. Fish and Wildlife Service to determine whether the use of propeller guards should be required to protect manatees.

In regard to the protection of northern right whales from collisions with project-related vessels, approximately 50 to 60 ocean-going vessels are expected to deliver solid fuel, fuel oil, and limestone to Northside Generating Station annually after both units are repowered. In comparison, about 65 vessels delivered fuel oil to the station in 1998. However, some of these vessels were smaller river barges that did not enter into the Atlantic Ocean, which contains critical habitat for northern right whales from the shoreline out to as far as 15 nautical miles. As an upper-bound estimate, the annual increase in traffic in the Atlantic Ocean after both units are repowered would be about 50 vessels, which is less than 2.5% of the 2,047 round-trips made by vessels traveling between the St. Johns River and the Atlantic Ocean in 1999. The ocean-going vessels are not expected to travel at speeds greater than about 12 knots. Because (1) the trips (about 1 per week) would be relatively infrequent, (2) the number of trips would be a small percentage of current traffic, and (3) the vessels would travel slower than the threshold speed of 14 knots above which most serious injuries to whales occur, no mitigation measures would be necessary to protect northern right whales from collisions with project-related vessels. Staff with the National Marine Fisheries Service have concurred with this assessment.

In regard to the use of propeller guards to protect manatees from vessels delivering fuel to Northside Generating Station, currently propeller guards are not used on vessels in the St. Johns River. However, with the implementation of the mitigation measures discussed in the EIS (*e.g.*, the dock design would allow sufficient space between vessels and the dock structure such that manatees could easily avoid being trapped), it is unlikely that the proposed project would cause harm to a significant number of manatees, even without propeller guards on project-related vessels. Staff with the U.S. Fish and Wildlife Service have concurred with this assessment.

The Florida Department of Transportation stated that the project may have a direct impact on the State Transportation System and requested that JEA submit all site plans and access plans to the Jacksonville permit engineer. JEA has contacted the Jacksonville permit engineer cited in the comment and both parties agree that, because project-related construction would not occur along Heckscher Drive and because the only access for construction personnel would be located at the New Berlin Road entrance to the facility, JEA is not required to submit site plans and access plans for the proposed project to the Florida Department of Transportation.

The Florida Department of State, Division of Historical Resources stated that the JEA EIS addresses their concerns in regard to the potential impact on historic properties listed, or eligible for listing, in the National Register of Historic Places. The Division of Historical Resources also stated their opinion that no historic resources would be affected by the proposed action.

The U.S. EPA, Region 4, stated that their initial comments/concerns on the draft EIS have been satisfactorily addressed and that they appreciate the mitigation measures that JEA has agreed to employ in order to address potential impacts. EPA further stated that they continue to have environmental concerns about potential process releases and project impacts. DOE believes that by implementing the mitigation measures described in this Record of Decision it will address EPA's concerns.

A member of the local community expressed concerns regarding groundwater use, particulate emissions, and construction worker safety. Regarding groundwater use, as discussed above under Water Resources, JEA has committed to a 10% reduction in total annual groundwater consumption at Northside Generating Station after Units 1 and 2 are repowered (as compared to 1996 levels). Similarly for particulate emissions (see Air Quality above), JEA has established a target of a 10% reduction in annual stack emissions of particulate matter from Northside Generating Station (Units 1, 2, and 3), as compared to emissions during a recent typical 2-year operating period (1994–95) of the station (Units 1 and 3). These reductions are to be accomplished while increasing the total annual energy output of the station. In regard to the concerns expressed about construction worker safety, DOE believes that this concern reflects an accident that occurred in July 2000, while JEA was constructing (at its own risk) the solid fuel storage dome associated with the proposed project. In the response to the accident, JEA completed a root cause analysis to ensure that worker safety is not compromised. The analysis concluded that wind speeds during the incident exceeded the design threshold of the dome anchoring system during construction. Consequently, the construction process has been redesigned to use additional anchors and to delay installation of most of the dome covering until after the entire structural frame is permanently anchored.

Decision

DOE will implement the proposed action of providing approximately $73 million in cost-shared federal funding support to design, construct, and demonstrate the CFB technology proposed by JEA. The project is intended to demonstrate the combined removal of SO_2, NO_x, and particulate matter in a promising technology that is ready to be commercialized within the range that is most desired by utilities (250 to 400 MW). The project is expected to generate sufficient data from design, construction, and operation to allow private industry to assess the potential for commercial application of the CFB technology. This decision to provide cost-shared funding for the proposed project was made after careful review of the potential environmental impacts, as analyzed in the EIS.

Mitigation Action Plan

In accordance with § 1021.331(a) of the DOE NEPA regulations, DOE will prepare a Mitigation Action Plan that addresses mitigation commitments expressed in this ROD. Copies of the Mitigation Action Plan may be obtained from Dr. Jan Wachter, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone: (412) 386–4809.

Issued in Washington, D.C., on this 29th day of November, 2000.

Robert S. Kripowicz,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 00–31160 Filed 12–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration

AGENCY: Department of Energy.

ACTION: Issuance of the Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications

Involving Research, Development and Demonstration.

SUMMARY: The U.S. Department of Energy (DOE) is announcing its intention to issue the Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration (herein referred to as Broad Based Solicitation), DE–PS36–01GO90000.

DATES: Supplemental Announcements to the Broad Based Solicitation will be issued throughout the year. Each Supplemental Announcement will contain technology specific information, anticipated programmatic funding levels, any specific eligibility requirements, any specific application instructions, evaluation criteria, any cost sharing requirements, Program Policy Factors, application deadlines, and any other requirements specific to obtaining Financial Assistance Awards.

ADDRESSES: Copies of the Fiscal Year 2001 Broad Based Solicitation, consisting of the first part and all Supplemental Announcements, will be posted on the DOE Golden Field Office Home Page at http://www.golden.doe.gov/businessopportunities.html, under ''Solicitations.''

SUPPLEMENTARY INFORMATION: Under this announcement, the U.S. Department of Energy (DOE) is announcing its intention to issue the Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration (herein referred to as Broad Based Solicitation), DE–PS36–01GO90000. The Broad Based Solicitation expresses the Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy's (EERE), continuing interest in receiving Applications for Financial Assistance Awards (Grants and Cooperative Agreements) in support of renewable energy and energy efficiency basic research, applied research, cooperative demonstrations, and related activities. The Broad Based Solicitation will consist of two parts: the first part which establishes guidelines and requirements for submitting Applications in response to individual Supplemental Announcements; the second part will consist of individual Supplemental Announcements and will be specific to designated technology areas of interest. These individual Supplemental Announcements will contain technology specific information, anticipated programmatic funding levels, any specific eligibility requirements, any specific application instructions, evaluation criteria, any cost sharing requirements, application deadlines, and any other requirements specific to obtaining Financial Assistance Awards. The Broad Based Solicitation, consisting of the first part and all Supplemental Announcements, will be posted on the DOE Golden Field Office Home Page at http://www.golden.doe.gov/businessopportunities.html, under ''Solicitations.''

DOE intends to issue Supplemental Announcements to this document throughout Fiscal Year 2001. Each Supplemental Announcement will be posted on the Golden Field Office Home Page. A notice to release Supplemental Announcements will be published in the **Federal Register** and, if appropriate, in the Commerce Business Daily or other publications. Any application that is submitted in response to this Broad Based Solicitation must also be in direct response to a specific Supplemental Announcement.

FOR FURTHER INFORMATION CONTACT: All questions concerning the Broad Based Solicitation must be submitted in writing to: Ruth E. Adams, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393 or transmitted via facsimile to Ruth E. Adams at (303) 275–4788, or electronically to ruth_adams@nrel.gov. Responses to questions will be made by Amendment to this Broad Based Solicitation and posted on the DOE Golden Field Office Home Page. Questions specific to individual Supplemental Announcements should be directed to the point of contact indicated in the Supplemental Announcement, and answers will be posted as Amendments to the Supplemental Announcement on the Golden Field Office Home Page.

Issued in Golden, Colorado, on November 22, 2000.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 00–31161 Filed 12–6–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Science; Continuation of Solicitation for the Office of Science Financial Assistance Program—Notice 01–01

AGENCY: Department of Energy.

ACTION: Annual notice of continuation of availability of grants and cooperative agreements.

SUMMARY: The Office of Science of the Department of Energy hereby announces its continuing interest in receiving grant applications for support of work in the following program areas: Basic Energy Sciences, High Energy Physics, Nuclear Physics, Advanced Scientific Computing, Fusion Energy Sciences, Biological and Environmental Research, and Energy Research Analyses. On September 3, 1992, (57 FR 40582), DOE published in the **Federal Register** the Office of Energy Research Financial Assistance Program (now called the Office of Science Financial Assistance Program), 10 CFR part 605, Final Rule, which contained a solicitation for this program. Information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures are specified in 10 CFR part 605.

DATES: Applications may be submitted at any time in response to this Notice of Availability.

ADDRESSES: Applications must be sent to: Director, Grants and Contracts Division, Office of Science, SC–64, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. When preparing applications, applicants should use the Office of Science Financial Assistance Program Application Guide and Forms located on the World Wide Web at http://www.science.doe.gov/production/grants/grants.html. Applicants without Internet access may call 301–903–5212 for information.

SUPPLEMENTARY INFORMATION: This notice is published annually and remains in effect until it is succeeded by another issuance by the Office of Science, usually published after the beginning of the fiscal year. This annual Notice 01–01 succeeds Notice 00–01, which was published November 5, 1999.

It is anticipated that approximately $400 million will be available for grant and cooperative agreement awards in FY 2001. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this Notice.

In addition, the following program descriptions are offered to provide more in-depth information on scientific and technical areas of interest to the Office of Science:

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research

in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. The science areas and their objectives are as follows:

(a) Materials Sciences

The objective of this program is to increase the understanding of phenomena and properties important to materials behavior that will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, condensed matter physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

Program Contact: (301) 903–3427.

(b) Chemical Sciences

The objective of this program is to expand, through support of basic research, knowledge of various areas of chemistry, chemical engineering and atomic molecular and optical physics with a goal of contributing to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas where research is supported include atomic molecular and optical physics; physical, inorganic and organic chemistry; chemical physics; photochemistry; radiation chemistry; analytical chemistry; separations science; actinide chemistry; and chemical engineering sciences.

Program Contact: (301) 903–5804.

(c) Engineering Research

This program's objectives are: (1) To extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output performance, and environmental quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies. Long-term research topics of current interest include: foundations of bioprocessing of fuels and energy related wastes, micro- and nano-scale energy transport, fracture mechanics, fundamental studies of multiphase flows and heat transfer, robotics and intelligent machines, nanotechnology, and diagnostics and control for plasma processing of materials.

Program Contact: (301) 903–3427.

(d) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of those geologic processes related to energy and environmental quality. The emphasis is on disciplinary areas of geophysics, geomechanics, hydrogeology and geochemistry with a focus on the upper levels of the earth's crust. Particular emphasis is on rock-fluid systems and interactions emphasizing processes taking place at the atomic and molecular scale. Specific topical areas receiving emphasis include: High resolution geophysical imaging; rock physics, physics of fluid transport, and fundamental properties and interactions of rocks, minerals, and fluids.

Program Contact: (301) 903–5804.

(e) Energy Biosciences

The primary objective of this program is to generate the fundamental understanding of biological mechanisms in the areas of botanical and microbiological sciences that will support technological developments related to DOE's mission. The research serves as the basic information foundation with respect to an environmentally responsible renewable resource production for fuels and chemicals, microbial conversions of renewable materials and biological systems for the conservation of energy. This program has special requirements for the submission of preapplications, when to submit, and the length of the applications. Applicants are encouraged to contact the program regarding these requirements.

Program Contact: (301) 903–2873.

2. High Energy and Nuclear Physics

This program supports about 90% of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) High Energy Physics

The primary objectives of this program are to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents, and to understand the nature and relationships among the fundamental forces of nature. The research falls into three broad categories: Experimental research, theoretical research, and technology R&D in support of the high energy physics program.

Program Contact: (301) 903–3624.

(b) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter.

Program Contact: (301) 903–3613.

3. Advanced Scientific Computing Research

This program fosters and supports fundamental research in advanced computing research (applied mathematics, computer science and networking), and operates supercomputer, networking, and related facilities to enable the analysis, modeling, simulation, and prediction of complex phenomena important to the Department of Energy.

Mathematical, Information, and Computational Sciences

This subprogram supports a spectrum of fundamental research in applied mathematical sciences, computer science, and networking from basic through prototype development. Results of these efforts are used to form partnerships with users in scientific disciplines to validate the usefulness of the ideas and to develop them into tools. Testbeds on important applications for DOE are supported by this subprogram. Areas of particular focus are:

Applied Mathematics: Research on the underlying mathematical understanding and numerical algorithms to enable effective description and prediction of physical systems such as fluids, magnetized plasmas, or protein molecules. This includes, for example, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

Computer Science: Research in computer science to enable large scientific applications through advances in massively parallel computing such as very lightweight operating systems for parallel computers, distributed computing such as development of the Parallel Virtual Machine (PVM) software package which has become an industry standard, and large scale data management and visualization. The development of new computer and computational science techniques will allow scientists to use the most advanced computers without being

overwhelmed by the complexity of rewriting their codes every 18 months.

Networking: Research in high performance networks and information surety required to support high performance applications—protocols for high performance networks, methods for measuring the performance of high performance networks, and software to enable high speed connections between high performance computers and networks. The development of high speed communications and collaboration technologies will allow scientists to view, compare, and integrate data from multiple sources remotely.

Program Contact: (301) 903–5800.

4. Fusion Energy Sciences

The mission of the Fusion Energy Sciences program is to advance plasma science, fusion science, and fusion technology and, thereby the knowledge base needed for an economically and environmentally attractive fusion energy source. The Office of Fusion Energy Sciences (OFES) supports basic and applied research, encourages technical connectivity with the broader U.S. science community, and uses international collaboration to accomplish this mission.

(a) Research Division

This Division seeks to develop the physics knowledge base needed to advance the Fusion Energy Sciences program toward its goals. Research into physics issues associated with medium to large-scale confinement devices is essential to studying conditions relevant to the production of fusion energy. Experiments on this scale of devices are used to explore the limits of specific confinement concepts, as well as study associated physical phenomena. Specific areas of interest include: (1) Reducing plasma energy and particle transport at high densities and temperatures, (2) understanding the physical laws governing confinement of high pressure plasmas, (3) investigating plasma wave interactions, and (4) studying and controlling impurity particle transport and exhaust in plasmas.

Research is also carried out in the following areas: (1) Basic plasma science research directed at furthering the understanding of fundamental processes in plasmas; (2) theoretical research to provide the understanding of fusion plasmas necessary for interpreting results from present experiments, planning future experiments, and designing future confinement devices; (3) critical data on plasma properties, atomic physics and new diagnostic techniques for support of confinement experiments; (4) supporting research on innovative confinement concepts; and (5) research on issues that support the development of Inertial Fusion Energy, for which target development is carried out by the Office of Defense Programs in the Department of Energy's National Nuclear Security Agency.

Program Contact: (301) 903–4095.

(b) Facilities and Enabling Technologies Division

This Division is responsible for overseeing the facility operations and enabling research and development activity budgets within the OFES. Grant program opportunities are in the enabling research and development activity. (Grants for scientific use of the facilities operated/maintained by this Division should be addressed to the Research Division.) The enabling technologies program supports the advancement of fusion science in the nearer-term by carrying out research on technological topics that: (1) Enable domestic experiments to achieve their full performance potential and scientific research goals; (2) permit scientific exploitation of the performance gains being sought from physics concept improvements; (3) allow the U.S. to enter into international collaborations gaining access to experimental conditions not available domestically; and (4) explore the science underlying these technological advances.

The enabling technologies program supports pursuit of fusion energy science for the longer-term by conducting research aimed at innovative technologies, designs and materials to point toward an attractive fusion energy vision and affordable pathways for optimized fusion development.

Program Contact: (301) 903–3068.

5. Biological and Environmental Research Program

For over 50 years the Biological and Environmental Research (BER) Program has been investing to advance environmental and biomedical knowledge connected to energy. The BER program provides fundamental science to underpin the business thrusts of the Department's strategic plan. Through its support of peer-reviewed research at national laboratories, universities, and private institutions, the program develops the knowledge needed to identify, understand, and anticipate the long-term health and environmental consequences of energy production, development, and use.

(a) Life Sciences Research

Research is focused on using DOE's unique resources and facilities to develop fundamental biological information and advanced technologies to understand and mitigate potential health effects of energy development, energy use, and waste cleanup. The objectives are: (1) To create and apply new technologies and resources in sequencing, comparative genomics, and bioinformatics to characterize the human genome; (2) to develop and support DOE national user facilities for use in fundamental structural biology; (3) to use model organisms to understand human genome organization, human gene function and control, and the functional relationships between human genes and proteins; (4) to characterize and exploit the genomes and diversity of microbes with potential relevance for energy, bioremediation, or global climate; (5) to understand and characterize the risks to human health from exposures to low levels of radiation; and (6) to anticipate and address ethical, legal, and social implications arising from genome research.

Program Contact: (301) 903–5468.

(b) Medical Applications and Measurement Science

The research is designed to develop beneficial applications of nuclear and other energy-related technologies for medical diagnosis and treatment. The research is directed at discovering new applications of radiotracer agents for medical research as well as for clinical diagnosis and therapy. A major emphasis is placed on application of the latest concepts and developments in genomics, structural biology, computational biology, and instrumentation. Much of the research seeks breakthroughs in noninvasive imaging technologies such as positron emission tomography. The measurement science activities focus on research in the basic science of chemistry, physics and engineering as applied to bioengineering.

Program Contact: (301) 903–3213.

(c) Environmental Remediation

The research is primarily focused on the fundamental biological, chemical, geological, and physical processes that must be understood for the development and advancement of new, effective, and efficient processes for the remediation and restoration of the Nation's nuclear weapons production sites. Priorities of this research are bioremediation and operation of the William R. Wiley Environmental Molecular Sciences

Laboratory (EMSL). Bioremediation activities are centered on the Natural and Accelerated Bioremediation Research (NABIR) program, a basic research program focused on determining the conditions under which bioremediation will be a reliable, efficient, and cost-effective technique. This subprogram also includes basic research in support of pollution prevention, sustainable technology development and other fundamental research to address problems of environmental contamination.

Program Contact: (301) 903–3281.

(d) Environmental Processes

The program seeks to understand the basic physical, chemical, and biological processes of the Earth's atmosphere, land, and oceans and how these processes may be affected by energy production and use. The research is designed to provide data that will enable an objective assessment of the potential for and consequences of global warming at global and regional scales. The program is comprehensive with an emphasis on understanding and simulating the radiation balance from the surface of the Earth to the top of the atmosphere (including the effect of clouds, water vapor, trace gases, and aerosols) and on enhancing the quantitative models necessary to predict possible climate change at global and regional scales.

The Climate Change Technology (CCT) research seeks the understanding necessary to exploit the biosphere's natural carbon sequestration processes to enhance the sequestration of carbon dioxide in terrestrial systems and the ocean and to understand its potential environmental implications. The CCT includes research that can lead to the development of approaches to reduce or overcome the environmental and biological factors or processes that limit the sequestration of carbon in these systems to enhance the net sequestration of carbon in terrestrial and ocean systems. The research includes studies on terrestrial and ocean carbon sequestration and disposal, including research to modify the carbon sequestration capacity and rate by marine and terrestrial organisms and to understand the potential environmental implications of purposeful policies intended to enhance the natural sequestration of carbon in terrestrial and marine systems and/or dispose of carbon by deep ocean injection.

Program Contact: (301) 903–3281.

6. Energy Research Analyses

This program supports energy research analyses of the Department's basic and applied research activities. Specific objectives include assessments to identify any duplication or gaps in scientific research activities, and impartial and independent evaluations of scientific and technical research efforts. Consistent with these overall objectives, this program conducts numerous research studies to assess directions in science and to identify and assess new and improved approaches to science management.

Program Contact: (202) 586–9942.

7. Experimental Program To Stimulate Competitive Research (EPSCoR)

The objective of the EPSCoR program is to enhance the capabilities of EPSCoR states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. This program addresses basic research needs across all of the Department of Energy research interests. Research supported by the EPSCoR program is concerned with the same broad research areas addressed by the Office of Science programs that are described in this notice. The EPSCoR program is restricted to applications, which originate in nineteen states (Alabama, Alaska, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming) and the commonwealth of Puerto Rico. It is anticipated that only a limited number of new competitive research grants will be awarded under this program subject to the availability of funds.

Program Contact: (301) 903–3427.

Issued in Washington, DC on: November 30, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–31159 Filed 12–6–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–113–000]

Algonquin Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 2000.

Take notice that on November 22, 2000, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 707 and First Revised Sheet No. 708, to be effective on January 1, 2001.

Algonquin states that the purpose of this filing is to revise the phone number of the person to whom complaints should be directed regarding Algonquin's compliance with the Commission's gas marketing affiliate rules and to provide for the posting on Algonquin's Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

Algonquin states that copies of its filing has been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31130 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–114–000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 1, 2000.

Take notice that on November 22, 2000, Algonquin LNG, Inc. (ALNG)

tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 82, to be effective on January 1, 2001.

ALNG states that the purpose of this filing is to revise the phone number of the person to whom complaints should be directed regarding ALNG's compliance with the Commission's gas marketing affiliate rules and to provide for the posting on ALNG's Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31131 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–414–000]

Consumers Energy Company Michigan Electric Transmission Company; Notice of Filing

November 30, 2000.

Take notice that on November 13, 2000, Consumers Energy Company (Consumers) and Michigan Electric Transmission Company (Michigan Transco), tendered for filing a Michigan Transco Open Access Transmission Tariff (OATT) which is to supersede, for the most part, Consumers' OATT (Consumers FERC Electric Tariff No. 6). The revision is to reflect the proposed transfer of Consumer's transmission assets to Michigan Transco. Copies of the filing were served upon all customers under Consumers' OATT and upon the Michigan Public Service Commission.

Consumers and Michigan Transco request that the filed OATT be allowed to take effect on the date of the transfer of those assets, expected to occur approximately February 1, 2001.

Any person desiring to be heard or to protest such filing 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). All such motions and protests should be filed on or December 8, 2000. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31125 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–116–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 2000.

Take notice that on November 22, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 170, to be effective on January 1, 2001.

East Tennessee states that the purpose of this filing is to revise the phone number of the person to whom complaints should be directed regarding East Tennessee's compliance with the Commission's gas marketing affiliate rules and to provide for the posting on East Tennessee's Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31133 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1053–004]

Maine Public Service Company; Notice of Filing

December 1, 2000.

Take notice that on November 3, 2000, Maine Public Service Company (MPS), tendered for filing Original Sheet No. 196 inadvertently omitted from the open access transmission tariff filed with the Commission on October 13, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or December 11, 2000. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, *http://www/ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31128 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–115–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 1, 2000.

Take notice that on November 22, 2000, Maritimes & Northeast Pipeline, L.L.C.; (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 301, to be effective on January 1, 2001.

Maritimes states that the purpose of this filing is to revise the title of the person to whom complaints should be directed regarding Maritimes' compliance with the Commission's gas marketing affiliate rules and to provide for the posting on Maritimes' Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

Maritimes states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims. htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.200(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31132 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–16–000]

Pontook Operating Limited Partnership, Complainant, v. Public Service Company of New Hampshire, Respondent; Notice of Complaint

December 1, 2000.

Take notice that on November 30, 2000, Pontook Operating Limited Partnership (Pontook) filed a complaint and request for relief under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e(2000), alleging that its transmission agreement with PSNH subjects it to unjust and unreasonable transmission rates in violation of section 205 of the FPA and the Commission's transmission pricing policies.

Pontook requests that the Commission (1) terminate its transmission agreement with PSNH effective November 1, 2000, or in the alternative, terminate its transmission agreement with PSNH effective immediately; (2) allow it to take transmission service under the New England Power Pool (NEPOOL) Open Access Transmission Tariff and Northeast Utilities' (NU) Open Access Transmission Tariff; and (3) order PSNH to refund to Pontook all transmission charges that Pontook paid pursuant to the Transmission agreement since the Commission's 1992 order approving PSNH's merger with NU; or in the alternative, order PSNH to refund to Pontook transmission charges that PSNH collected improperly from Pontook purportedly pursuant to the Transmission Agreement since (a) the Commission's May 1996 issuance of Order No. 888, or (b) the December 1996 filing of the NEPOOL Tariff, or (c) November 1, 2000—the natural termination date of the transmission agreement between Pontook and PSNH.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before December 20, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the

Public Reference Room. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before December 20, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31163 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP93–148–001, et al.]

Sea Robin Pipeline Company; Notice of Compliance Filing

December 1, 2000.

Take notice that on November 6, 2000, Sea Robin Pipeline Company (Sea Robin) tendered for filing, as part of its FERC Gas Tariffs, First Revised Volume No. 1 and Original Volume No.2, revised tariff sheets to comply with ordering paragraph (A) of the Federal Energy Regulatory Commission's April 1, 1993, Order Approving Abandonment in the referenced dockets. Sea Robin's tariff sheets reflect cancellation of Rate Schedules X–14, X–15, X–16, X–17, X–21, X–24, X–27, X–28, and X–32.

Sea Robin states that a copy of this filing is available for public inspection during regular business hours at Sea Robin's office at 5444 Westheimer Road, Houston, Texas 77056–5036. In addition, copies of this filing are being served on parties to the proceeding and appropriate state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 384.214 of the Commission's Rules of Practices and Procedures. All such motions or protests must be filed not later than December 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Applicant's designated contact person is Anna Cochrane at 202–293–5794. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–31126 Filed 12–06–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–41–000; ER01–42–000]

Sithe Fore River Development LLC and Sithe Mystic Development LLC; Notice of Issuance of Order

December 1, 2000.

Sithe Fore River Development LLC and Sithe Mystic Development LLC (together, ''Applicants'') submitted for filing rate schedules under which Applicants will engage in wholesale electric power and energy transactions at market-based rates. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On November 29, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 358.211 and 385.214).

Absent a request for hearing within this period, Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purpose of the Applicants, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Applicants' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 2000.

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. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31123 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3760–000]

Southern Company Energy Marketing L.P., et al.; Notice of Issuance of Order

December 1, 2000.

Southern Company Energy Marketing L.P., *et al.* (SCEM) submitted for filing a rate schedule under which SCEM will engage in wholesale electric power and energy transactions at market-based rates. SCEM also requested waiver of various Commission regulations. In particular, SCEM requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by SCEM.

On November 21, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by SCEM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, SCEM is authorized to issue

securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of SCEM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 21, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31124 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–553–002]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

December 1, 2000.

Take notice that on November 22, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain pro forma revised tariff sheets to comply with the Commission's Order issued on October 27, 2000 in Docket Nos. RM96–1–14 and RP00–553–000.

Transco states that the purpose of the instant filing is to comply with the Commission's October 27 Order in the referenced dockets to file tariff sheets within 30 days of the order describing how imbalance netting and trading will be performed on the Transco system when such trading becomes operational. Transco anticipates that it will propose to implement, among other things, imbalance netting and trading when it files to revise its tariff to reflect its new, state of the art, internet-based, service delivery computer system, 1Linesm. This new computer system will replace Transco's current computer system and therefore, the pro forma tariff sheets and explanation of Transco's proposed imbalance netting and trading service contained herein necessarily include related tariff changes that Transco will propose as part of its complete service delivery tariff filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–31134 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–30–000, et al.]

Canal Emirates Power International, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Canal Emirates Power International, Inc. and IPP Energy LLC

[Docket No. EC01–30–000]

Take notice that on November 22, 2000, Canal Emirates Power International, Inc. (Canal) and IPP energy LLC (IPP) (collectively, Applicants), hereby request that the Commission grant approval of the transfer of the Binghamton generating facility and its associated generator step-up transformer and interconnection equipment owned by Canal to IPP. Applicants request confidential treatment of Exhibit H of the Application.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. AES NewEnergy, Inc., NEV East, L.L.C., NEV Midwest, L.L.C., NEV California, L.L.C.

[Docket No. EC01–31–000]

Take notice that on November 22, 2000, AES NewEnergy, Inc., NEV East, L.L.C., NEV Midwest, L.L.C. and NEV California, L.L.C. tendered for filing with the Federal Energy Regulatory Commission an application for approval of the disposition of jurisdictional facilities under section 203 of the Federal Power Act in the above-referenced docket, that will be part of an intra-corporate reorganization. These jurisdictional facilities are wholesale power contracts and the associated books and records that will be assigned to AES NewEnergy, Inc.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company and Avista Corporation

[Docket No. EC01–32–000]

Take notice that on November 20, 2000, Idaho Power Company and Avista Corporation tendered for filing an Application for Authorization Under Section 203 of the Federal Power Act. Specifically, Idaho Power seeks to sell, and Avista seeks to purchase, jurisdictional transmission facilities consisting of a 20.23 mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha.

Applicants are also filing concurrently applications for amendment of Idaho Power's license for Project No. 1971 (deleting from the license the facilities to be transferred), and amendment of Avista's transmission line minor-part license for Project No. 2261 (adding to the license the facilities to be transferred).

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER01–99–4415–005]

Take notice that on November 24, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, submitted for filing a Refund Report as required by the Letter Order of October 12, 2000 in Docket Nos. ER99–4415–000, *et al.*

Illinois Power states that a copy of the Refund Report has been served on all parties in Docket Nos. ER99–4415–000,

et al. and the Illinois Commerce Commission.

Comment date: December 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. DTE Energy Services, Inc., DTE Georgetown, LLC, DTE Georgetown Holdings, Inc.

[Docket No. EC01–29–000]

Take notice that on November 21, 2000, DTE Energy Services, Inc., DTE Georgetown, LLC (Georgetown) and DTE Georgetown Holdings, Inc. (Applicants) tendered for filing an application for authorization pursuant to Section 203 of the Federal Power Act for an intra-corporate change in the upstream ownership of Georgetown. Also, on November 22, 2000, the Applicants submitted Attachment D (draft of the limited partnership agreement) which was inadvertently left off of the Application.

A copy of this Application and Attachment D have been served on the Michigan Public Service Commission.

Comment date: December 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. GenPower Anderson, LLC

[Docket No. EG01–34–000]

Take notice that on November 22, 2000, GenPower Anderson, LLC (Applicant), a Delaware limited liability company, whose address is 1040 Great Plain Avenue, Needham, MA, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant intends to construct an approximate 640 MW natural gas-fired combined cycle independent power production facility in Anderson, South Carolina (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the southern United States.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. GenPower Keo, LLC

[Docket No. EG01–35–000]

Take notice that on November 22, 2000, GenPower Keo, LLC (Applicant), a Delaware limited liability company, whose address is 1040 Great Plain Avenue, Needham, MA, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant intends to construct an approximate 240 MW natural gas-fired combined cycle independent power production facility in Keo, Arkansas (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the southern United States.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31122 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER001–511–000, et al.]

Williams Energy Marketing & Trading Company, et al.; Electric Rate and Corporate Regulation Filings

November 30, 2000.

Take notice that the following filings have been made with the Commission:

1. Williams Energy Marketing & Trading Company

[Docket No. ER01–511–000]

Take notice that on November 27, 2000, Williams Energy Marketing & Trading Company (Williams EM&T), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994) and Part 35 of the Commission's Regulations, 18 CFR 35, revised Reliability Must-Run Service Agreements (RMR Agreements) between Williams EM&T and the California Independent System Operator Corporation (ISO) for certain RMR units located at the Alamitos, Huntington Beach, and Redondo Beach Generating Stations.

The purpose of the filing is to comply with the Commission Order issued in Docket Nos. ER98–441–022, et al., accepting an Offer of Settlement filed by Williams EM&T and other parties on August 14, 2000, 93 FERC ¶ 61,089 (October 26, 2000).

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corporation

[Docket No. ER01–495–000]

Take notice that on November 21, 2000, on behalf of WPS Resources Operating Companies (WPSR), Wisconsin Public Service Corporation (WPSC), tendered for filing a revised partial requirements service agreement with Manitowoc Public Utilities (MPU). First Revised Service Agreement No. 5 provides MPU's contract demand nominations for January 2001—December 2005, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER01–494–000]

Take notice that on November 21, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing Thirty-four (34) signatory pages of parties to the Operating Agreement.

PJM requests an effective date on day after this Notice is received by FERC.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER01–493–000]

Take notice that on November 21, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted changes to Market Rules and Procedures 3–A, 5, and 11, and informed the Commission of a delay in the implementation of electronic dispatch. A waiver of the Commission's notice requirements has been requested to permit the revisions to Market Rules 3–A and 5 to become effective as of December 16, 2000 and December 21, 2000 respectively.

A February 21 effective date has been requested for the revisions to Market Rule 11.

In addition, NEPOOL has notified the Commission that the implementation of electronic dispatch within the NEPOOL Control Area has been delayed from December 5 to December 16, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER01–492–000]

Take notice that on November 21, 2000, Carolina Power & Light Company (CP&L), tendered for filing a First Revised Service Agreement No. 197 (Revised Agreement) between CP&L and North Carolina Electric Membership Corporation (NCEMC) under CP&L's market-based rate tariff, FERC Electric Tariff Volume No. 4. The Revised Agreement included an amendment to the assignment provision in Section 11.7.

CP&L requested that the Revised Agreement become effective on January 1, 2001.

Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and NCEMC.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER01–491–000]

Take notice that on November 21, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with El Paso Merchant Energy, L.P., (El Paso).

Northern Indiana has requested an effective date of November 21, 2000.

Copies of this filing have been sent to El Paso, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER01–490–000]

Take notice that on November 21, 2000, Arizona Public Service Company (APS), tendered for filing a Transmission Service Agreements to provide Non-Firm Point-to-Point Transmission Service to the Navajo Tribal Utility Authority under APS' Open Access Transmission Tariff.

A copy of this filing has been served on the Navajo Tribal Utility Authority and the Arizona Corporation Commission.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Public Service Company

[Docket No. ER01–489–000]

Take notice that on November 21, 2000, Xcel Energy Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Sunflower Electric Power Corporation (Sunflower). This umbrella service agreement provides for Southwestern's sale and Sunflower's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. DPL Energy

[Docket No. ER01–56–001]

Take notice that on October 20, 2000, DPL Energy (DPLE), tendered for filing an amended long-term transaction agreement with The Dayton Power and Light Company to comply with Order No. 614.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. American Transmission Company LLC

[Docket No. ER01–488–000]

Take notice that on November 21, 2000, American Transmission Company LLC (ATCLLC), tendered for filing a Network Operating Agreement between ATCLLC and Madison Gas and Electric Company.

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service Company

[Docket No. ER01–487–000]

Take notice that on November 21, 2000, Excel Energy Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an umbrella service agreement between Southwestern and Northern States Power Corporation under Southwestern's Rate Schedule for the Sale Assignment, or Transfer of Transmission Rights.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER01–486–000]

Take notice that on November 21, 2000, Commonwealth Edison Company (ComEd), tendered for filing two amended Network Service Agreements (NSA) between ComEd and MidAmerican Energy Company (MEC), and between ComEd and Nicor Energy, L.L.C. (Nicor). ComEd asks that the MEC NSA supersede and be substituted for the NSA with MEC previously filed on November 17, 1999 in Docket No. ER00–589–000. ComEd asks that the Nicor NSA supersede and be substituted for the NSA with Nicor previously filed on December 22, 1999 in Docket No. ER00–884–000. The NSAs have been amended to change the termination date set forth in Section 3.2. The NSAs govern ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of November 1, 2000 and December 10, 2000 for the MEC and Nicor NSAs, respectively, and therefore seeks waiver of the Commission's notice requirements.

Copies of this filing were served on MEC and Nicor.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–485–000]

Take notice that on November 21, 2000, Allegheny Energy Service Corporation on behalf of Allegheny

Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 102 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of October 26, 2000 for NRG Power Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. American Transmission Company LLC

[Docket No. ER01–484–000]

Take notice that on November 21, 2000, American Transmission Company LLC (ATCLLC), tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin Power & Light Company.

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. American Transmission Company LLC

[Docket No. ER01–483–000]

Take notice that on November 21, 2000, American Transmission Company LLC (ATCLLC) tendered for filing a Distribution-Transmission Agreement between ATCLLC and Wisconsin Power & Light Company.

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. DPL Energy Resources, Inc.

[Docket No. ER01–462–000]

Take notice that on November 16, 2000, DPL Energy Resources, Inc. (DPLER), a wholly owned subsidiary of DPL Inc., tendered for filing a rate schedule to engage in sales at market-based rates. DPLER included in its filing a proposed code of conduct.

Comment date: December 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER98–702–002]

Take notice that on November 22, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business and hereinafter referred to as GPU Energy) reported changes in status that reflect a departure from the facts relied upon by the Commission in its grant of market-based authority to GPU Energy.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER99–1331–003]

Take notice that on November 24, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, submitted for filing a Refund Report as required by the Letter Order of November 24, 2000 in docket No. ER99–1331–000.

Illinois Power states that a copy of the Refund Report has been served on all parties in Docket No. ER99–1331–000 and to the Illinois Commerce Commission.

Comment date: December 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. American Electric Power Service Corporation

[Docket No. ER00–3517–001]

Take notice that on November 22, 2000, American Electric Power Service Corporation, tendered for filing, on behalf of the operating companies of the American Electric Power System (AEP), a Compliance Filing in the above-referenced Docket.

Copies of the filing have been served upon AEP's transmission customers and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER01–62–001]

Take notice that on November 22, 2000, Entergy Services, Inc. (Entergy) filed an exhibit to the filing previously submitted to the Federal Energy Regulatory Commission by Entergy on October 6, 2000 in the above-referenced proceeding.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Public Service Corporation

[Docket No. ER01–118–001]

Take notice that on November 22, 2000, on behalf of WPS Resources Operating Companies (WPSR), Wisconsin public Service Corporation (WPSC) tendered for filing a revised partial requirements service agreement with Washington Island Electric Cooperative (WIEC). First Revised Service Agreement No. 9 provides WIEC's contract demand nominations for January 2001—December 2005, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon WIEC and to the State Commissions where WPSC serves at retail.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Energy Delta, L.L.C. Southern Energy Potrero, L.L.C.

[Docket No. ER01–362–001]

Take notice that, on November 22, 2000, Southern Energy Delta, L.L.C. and Southern Energy Potrero, L.L.C. filed certain errata to their November 3, 2000 filing in the above-referenced docket, in the form of corrected tariff sheets to the filing as well as redlined pages showing the changes made.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Consumers Energy Company

[Docket No. ER01–496–000]

Take notice that on November 22, 2000, Consumers Energy Company (Consumers) tendered for filing an executed Service Agreement for Firm and Non-Firm Point to Point Transmission Service Agreement with Quest Energy, L.L.C. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

Consumers is requesting an effective date of October 25, 2000. Customer is taking service under the Service Agreement in connection with Consumers' Electric Customer Choice Plan.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Carolina Power & Light Company

[Docket No. ER01–498–000]

Take notice that on November 22, 2000, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, PSEG Energy Resources & Trade LLC. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

CP&L requests an effective date of November 14, 2000 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Commonwealth Edison Company

[Docket No. ER01–497–000]

Take notice that on November 22, 2000, Commonwealth Edison Company (ComEd) submitted for filing three executed Non-Firm Transmission Service Agreements with the Ameren Energy Marketing (AEM), Consumers Energy Company (CEC), and Upper Peninsula Power Company (UPP); one unexecuted Non-Firm Transmission Service Agreement with LS Power, LLC (LSP); ten executed Short-Term Transmission Service Agreements with Aquila Energy Marketing Corporation (AEMC), Ameren Energy Marketing (AEM) Florida Power Corporation (FPC), Griffin Energy Marketing, L.L.C. (GEM), Minnesota Power, Inc. (MP), New York State Electric & Gas Corporation (NYSEG), City of Rochelle, Illinois (ROCH), Strategic Energy, L.L.C. (SEL), Upper Peninsula Power Company (UPP), and Williams Energy Marketing & Trading Company (WEMT) under the terms of ComEd's Open Access Transmission Tariff (OATT).

Upon the request of AEMC and WEMT, ComEd is submitting re-executed Agreements for AEMC and WEMT that reflect the new names of these companies. The Agreement with AEMC was previously filed in Docket No. ER98–446–000, granted an effective date of October 8, 1997 and designated Service Agreement No. 195. The Agreement with WEMT was previously filed in Docket No. ER98–3779–000, granted an effective date of June 21, 1998 and designated Service Agreement No. 296. ComEd respectfully requests that the re-executed Agreements for AEMC and WEMT be granted the same effective dates as was accorded them in Docket Nos. ER98–446–000 and ER98–3779–000 proceedings. Good cause supports ComEd's request as the re-execution of these Agreements is being done at the request of AEMC and WEMT so as to reflect the new names of AEMC and WEMT. See Central Hudson Gas & Electric Company, 60 FERC 61,106(1992).

ComEd also submitted for filing an updated Index of Customers reflecting name changes for current customers Aquila Power renamed Aquila Energy Marketing Corporation (AEMC), Ameren Services Company renamed Ameren Energy Inc. (AEI), Public Service Electric and Gas Company renamed PSEG Energy Resources & Trade LLC (PSEG ER&T), Calpine Power Services Company renamed Calpine Energy Services, L.P. (CES), Amoco Energy Trading Corporation renamed BP Energy Company (BP), Minnesota Power and Light Company renamed Minnesota Power, Inc. (MP), Citizens Power LLC renamed Edison Mission Marketing & Trading, Inc. (EMMT), and Williams Energy Services Company renamed Williams Energy Marketing & Trading Company (WEMT).

ComEd requests an effective date of November 22, 2000 for the Non-Firm-Agreements with AEM, CEC and LSP; and effective date of November 9, 2000 for the Non-Firm Agreement with UPP to coincide with the first day of service, and an effective date of November 22, 2000 for the Short-Term Firm Agreements with AEMC, AEM, FPC, GEM, MP, NYSEG, ROCH, SEL, UPP and WEMT and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Xcel Energy Operating Companies, Northern States Power Company, Northern States Power Company (Wisconsin)

[Docket No. ER01–499–000]

Take notice that on November 22, 2000, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Alliant Energy Corporate Services Inc. NSP proposes the Agreement be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, Original Volume No. 2, as Service Agreement 176–NSP, pursuant to Order No. 614.

NSP requests that the Commission accept the agreement effective November 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. ER01–500–000]

Take notice that on November 22, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Wabash Valley Power Association, Inc. (WVPA).

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. California Independent System Operator Corporation

[Docket No. ER01–501–000]

Take notice that on November 22, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a notice concerning the termination of the Participating Generator Agreement (PGA) between the ISO and Burney Forest Power.

The ISO requests that the PGA be terminated effective as of October 13, 2000.

The ISO states that copies of this filing have been served on Burney Forest Power and the California Public Utilities Commission.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. California Independent System Operator Corporation

[Docket No. ER01–502–000]

Take notice that on November 22, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a notice concerning the termination of the Meter Service Agreement for ISO Metered Entities (MSA–ME) between the ISO and Burney Forest Power (Burney).

The ISO requests that the MSA–ME be terminated effective as of October 13, 2000.

The ISO states that copies of this filing have been served on Burney and the California Public Utilities Commission.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Entergy Services, Inc.

[Docket No. ER01–503–000]

Take notice that on November 22, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing an Interconnection and Operating Agreement with TPS Dell LLC, f/k/a/ GenPower Dell LLC (TPS Dell), and a Generator Imbalance Agreement with TPS Dell.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Southwestern Electric Power Company

[Docket No. ER01–504–000]

Take notice that on November 22, 2000, Southwestern Electric Power Company (SWEPCO) filed a Restated and Amended Electric System Interconnection Agreement (Agreement) between SWEPCO and Louisiana Generating LLC (LaGen). The Agreement supersedes in its entirety the 1988 Electric System Interconnection Agreement, as amended, between SWEPCO and Cajun Electric Power Cooperative (Cajun). In March 2000, LaGen acquired Cajun.

SWEPCO seeks an effective date of June 15, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on LaGen and on the Louisiana Public Service Commission.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. NEV California, L.L.C.

[Docket No. ER01–505–000]

Take notice that on November 22, 2000, NEV California, L.L.C. (NEV California) tendered for filing a notice of cancellation in operations pursuant to 18 CFR 35.14 in order to reflect the cancellation of its market-rate tariff originally accepted for filing by the Commission in Docket No. ER97–4653–000.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. NEV East, L.L.C.

[Docket No. ER01–506–000]

Take notice that on November 22, 2000, NEV East, L.L.C. (NEV East) tendered for filing a notice of cancellation in operations pursuant to 18 CFR 35.15 in order to reflect the cancellation of its market-rate tariff originally accepted for filing by the Commission in Docket No. ER97–4652–000.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. AES New Energy, Inc.

[Docket No. ER01–507–000]

Take notice that on November 22, 2000, AES New Energy, Inc. (AES New Energy) tendered for filing a notice of succession in operations pursuant to 18 CFR 35.16, in order to reflect its name change from New Energy Ventures, Inc.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. NEV Midwest, L.L.C.

[Docket No. ER01–508–000]

Take notice that on November 22, 2000, NEV Midwest, L.L.C. (NEV Midwest) tendered for filing a notice of cancellation in operations pursuant to 18 CFR 35.15, in order to reflect the cancellation of its market-rate tariff originally accepted for filing by the Commission in Docket No. ER97–4654–000.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Entergy Services, Inc.

[Docket No. ER01–509–000]

Take notice that on November 22, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with Duke Energy Southaven, LLC (Duke Southaven), and a Generator Imbalance Agreement with Duke Southaven.

Comment date: December 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER01–510–000]

Take notice that on November 24, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and El Paso Merchant Energy, L.P. (El Paso Power), dated November 22, 2000. This Service Agreement specifies that El Paso Power has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and El Paso Power to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 22, 2000 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers

Secretary.

[FR Doc. 00–31121 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–12–000]

El Paso Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line No. 2039 Pipeline Relocation Project and Request for Comments on Environmental Issues

December 1, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line No. 2039 Relocation Project involving construction and operation of

facilities by El Paso Natural Gas Company (El Paso) in Maricopa County, Arizona.[1] These facilities would consist of about 6.88 miles of 16-inch-diameter pipeline and one meter station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right to eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice El Paso provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.fed.us*).

Summary of the Proposed Project

El Paso wants to relocate a portion of the Line No. 2039 Pipeline located on the southwest side of Phoenix, Arizona, in order to avoid residential and industrial encroachment on the existing pipeline and meet DOT class requirements in the future. In addition, El Paso wants to increase the diameter of the pipe to satisfy increased gas demand expected from the expanded West Phoenix Power Plant at the north end of this pipeline.

El Paso seeks authority to abandon 6.88 miles of the existing 16-inch-diameter Line No. 2039 Pipeline and relocate it up to 2700 feet to the east on new right-of-way (ROW). The Line No. 2039 Pipeline would be abandoned in place, including those sections under roads, for about 2.9 miles, and would be abandoned by removal for about 4.0 miles. Four tap and valve assemblies with appurtenant facilities located on the existing Line No. 2039 Pipeline would be abandoned either in place or by removal. The existing Southern Avenue Meter Station would be abandoned by removal and relocated onto the new Line No. 2039 Pipeline in the northwest quadrant of Southern Avenue and 43rd Avenue Pig launching and receiving facilities would be installed at the Laveen Meter Station on Elliot Road and at the West Phoenix Meter Station north of Buckeye Road. The Salt River would be crossed using the open-trenching method. A block valve would be installed on each side of the Salt River. A 3,800–foot-long section of the new Line No. 2039 Pipeline from milepost 7.18 to 7.90 was installed in June 2000 under El Paso's blanket authority and would be tied into the proposed Line No. 2039 Pipeline.

The location of the project facilities is shown in appendix 1, figures 1 and 2.

Land Requirements for Construction

Replacement of the proposed facilities would require the use of 105 acres of land, primarily agricultural, with some residential land. This includes 73 acres of previously undisturbed ROW for the new pipeline, road, rail, and canal crossings, the new Southern Avenue Meter Station and associated staging area, and pigging facilities. Previously disturbed ROW in the amount of 32 acres would be required for abandoning sections of pipeline by removal.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land Use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by El Paso. This preliminary list of issues may be changed based on your comments and our analysis.

- A 1750-foot-long, open trench crossing of the Salt River would use a 30- to 75-foot-wide trench to bury the pipeline 25 feet below the river bed.
- Construction would be within 50 feet of four residences on Elliot Road and 43rd Avenue.
- Construction would disturb habitat potentially suitable for the federally listed endangered Yuma clapper rail located in the Salt River floodplain.
- The project area crosses several sites that may eligible to the National Register of Historic Places, including historic and prehistoric irrigation systems. The historic Farmers Canal system would be crossed in the vicinity of Buckeye Road. El Paso proposes to avoid adversely effecting the currently used historic Roosevelt Canal by boring beneath it.

Public Participation

You can make a difference by providing us with your specific

[1] El Paso's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative [locations/routes]), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of (Gas 2).
- Reference Docket No. CP00–012–000.
- Mail your comments so that they will be received in Washington, DC on or before January 2, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm* under the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by the other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–31127 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

December 1, 2000.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 2100.

c. *Date filed:* November 22, 2000.

d. *Applicant:* California Department of Water Resources (DWR).

e. *Name of Project:* Oroville Project (Feather River Project).

f. *Location:* On the Feather River, in Butte County, California. The project occupies federal lands within the Plumas and Lassen National Forests.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Viju Patel, Executive Manager, Power Systems at (916) 653–5913 or Rick Ramirez, State Water Project Analysis Office at (916) 653–1095.

i. *FERC Contact:* James Fargo at (202) 219–2848; e-mail james.fargo@ferc.fed.us

j. *Deadline for Comments:* January 8, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. The Oroville facilities consist of the existing Oroville Dam and Reservoir, the Edward Hyatt Powerplant, Thermalito Powerplant, Thermalito Diversion Dam Powerplant, Thermalito Forebay and Afterbay, and associated recreational and fish and wildlife facilities. The project has a total installed capacity of 762,000 kilowatts.

l. DWR has shown that it has made an effort to contact most federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. DWR has also shown that a consensus exists that the use of alternative procedures is appropriate in this case. DWR has submitted a proposed communications protocol that is supported by many of the stakeholders.

The purpose of this notice is to invite any additional comments on DWR's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. DWR will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review process into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

DWR has met with federal and state resources agencies, NGOs, elected officials flood control and downstream interests, environmental groups, business and economic development organizations, the boating industry, and members of the public regarding the

Oroville Project. DWR intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by January 31, 2005.

David P. Boergers,

Secretary.

[FR Doc. 00–31129 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 1, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP00–14–000—11/20/00—Tim Drake
2. Project No. 2042—11/21/00—Timothy Welch
3. CP00–6–000—11/27/00—Jon Schmidt
4. CP00–6–000—11/22/00—Jim Martin
5. CP00–6–000—11/20/00—Jim Martin
6. Project No. 2114—11/20/00—Lynn R. Miles
7. CP98–150–002—11/7/00—Donald J. Stauber
8. CP00–452–000—11/20/00—Ed Martinez
9. CP98–150–000—11/13 & 11/14/00—Juan Polit
10. Project Nos. 5931 and 7282—11/29/00—Donald B. Koch
11. Project No. 8657—11/27/00—CDL Perkins
12. CP00–141–000—11/28/00—Ann Garrett
13. CP00–14–000—11/6, 11/7, 11/8, and 11/9/00—John Wisniewski

Prohibited

1. EL00–95, EL00–98 and EL00–107—11/25/00—Mike Rothkopf

David P. Boergers,

Secretary.

[FR Doc. 00–31135 Filed 12–6–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100163; FRL–6757–5]

Arctic Slope Regional Corporation (ASRC) Aerospace; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Arctic Slope Regional Corporation (ASRC) Aerospace in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). ASRC Aerospace has been awarded a contract to perform work for OPP, and access to this information will enable ASRC Aerospace to fulfill the obligations of the contract.

DATES: ASRC Aerospace will be given access to this information on or before December 12, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number 68–W0–0102, work assignment 002, the contractor will perform the following:

The EPA Office of Pesticide Programs (OPP) maintains the OPP Public Docket in the Public Response Section of the Public Information and Records Integrity Branch (PIRIB) Information Resources and Services Division (IRSD). The OPP Docket supports the Agency's rulemaking activities as announced in the **Federal Register**, and Agency announcements concerning Special Reviews and Reregistration.

The Docket is open to the public and Agency staff from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The contractor shall identify himself/herself as a contractor to all visitors. The contractor shall be conversant about the history of the

docket, the purpose of the docket, and regulatory mechanisms which trigger docketing requirements. The contractor shall assist Docket visitors in using Docket indices and locating documents, and in using Docket resources such as the PR Notice collection, the Compact Label File, the copier and microfiche reader.

The contractor will manage and maintain the OPP Public Regulatory Docket in PIRIB.

The contractor must have access to CBI in order to conduct records management activities associated with the OPP's Public Regulatory Docket.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with ASRC Aerospace, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, ASRC Aerospace is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to ASRC Aerospace until the requirements in this document have been fully satisfied. Records of information provided to ASRC Aerospace will be maintained by EPA Project Officers for the contract. All information supplied to ASRC Aerospace by EPA for use in connection with the contract will be returned to EPA when ASRC Aerospace has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: November 28, 2000.

Joanne Martin,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–31195 Filed 12–6–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6913–5]

Notice of Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of hearing.

SUMMARY: This Notice announces that Kanoria Chemicals and Industries, Ltd., (Kanoria), has filed objections to a Notice of Intent to Suspend Registration of Pesticide Product(s) Containing Lindane, namely Lindane Technical Crystals (EPA Reg. No. 66951–1) and Lindane Technical Powder (EPA Reg. No. 66951–2), and has requested a hearing thereon. The Notice of Intent to Suspend was issued for Kanoria's alleged failure to comply with a Lindane Data Call-In Notice dated March 31, 1997, issued under Section 3(c)(2)(B) of the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA). This Notice also announces that a hearing will commence in Washington D.C. on January 9, 2001, pursuant to Kanoria's request for hearing.

DATES: Motions to intervene in the hearing announced by this Notice must be received by the Office of the Hearing Clerk at the address provided below by December 15, 2000. The hearing will commence on January 9, 2001, and will continue if necessary on January 10–12, 2001.

ADDRESSES: Motions to intervene, identified by FIFRA Data Docket No. 216, must be filed with Bessie Hammiel, Headquarters Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460; and copies served by mail on: (1) Chief Administrative Law Judge Susan L. Biro, Mail Code 1900L, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460; (2) Scott B. Garrison, Pesticides and Toxic Substances Law Office, Office of General Counsel, Mail Code 2333A, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460; and (3) Peter E. Seley, Gibson, Dunn & Crutcher, LLP, 1050 Connecticut Avenue, N.W., Washington D.C. 20036–5306.

The hearing will be held in the Ariel Rios Building, Room 7208, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Bessie Hammiel, Headquarters Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Office location: Office of the Hearing Clerk, Room C400, 401 M St. S.W., Washington D.C. 20460. Telephone: (202) 260–4865.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

Under Section 3(c)(2)(B) of FIFRA, if EPA determines that additional data are required to maintain in effect an existing registration of a pesticide, EPA notifies all existing registrants of the pesticide in a ''FIFRA Data Call-in Notice,'' requiring each registrant to provide evidence within ninety days that it is taking appropriate steps to secure the additional data. If a registrant fails to comply, EPA may issue a notice of intent to suspend the registration of the pesticide for which additional data was required. The suspension becomes final and effective thirty days from receipt by the registrant of the notice of intent to suspend, unless within that time period: (1) The registrant demonstrates that it has fully complied with the requirements that served as a basis for the notice to suspend, or (2) a request for hearing is made by a person adversely affected by the notice. FIFRA Section 3(c)(2)(B)(iv).

II. Hearing Procedures

Pursuant to Section 3(c)(2)(B)(iv) of FIFRA, if a hearing is requested, the hearing shall be conducted in accordance with FIFRA section 6(d). Regulations implementing the hearing procedures are set forth in 40 C.F.R. part 164, subpart B.

A. Issues To Be Adjudicated

Pursuant to Section 3(c)(2)(B)(iv) of FIFRA, two issues to be adjudicated are: (1) Whether Kanoria has failed to comply with the terms of a Data Call-In Notice dated March 31, 1997, as to Lindane Technical Crystals (EPA Reg. No. 66951–1) and Lindane Technical Powder (EPA Reg. No. 66951–2); and (2) whether EPA's prohibition on distribution, sale, use offering for sale, holding for sale, shipping, delivering for shipment, receipt and (having so received) delivering or offering to deliver existing stocks of Lindane Technical Crystals and Lindane Technical Powder, is inconsistent with

the terms of FIFRA. The Notice of Intent to Suspend, dated October 10, 2000, provides that after the suspension becomes final and effective, the registrant, including all supplemental registrants of Lindane Technical Crystals (EPA Reg. No. 66951–1) and Lindane Technical Powder (EPA Reg. No. 66951–2), are subject to the prohibition.

B. Participation in the Hearing

Any interested person may file a motion for leave to intervene in the hearing. Such motion must set forth the grounds for the proposed intervention, the position and interest of the movant in the proceeding and documents proposed to be filed relating to the Notice of Intent to Suspend the Registration of Lindane Technical Crystals (EPA Reg. No. 66951–1) and Lindane Technical Powder (EPA Reg. No. 66951–2). Such motion must be filed on or before December 15, 2000, or it must also set forth a statement of good cause for the failure to file the motion prior to that date. If leave to intervene is granted, the movant becomes a party to the proceeding with the full status of the original parties. If leave is denied, the movant may request that the ruling be certified to the Environmental Appeals Board, pursuant to § 164.200. 40 CFR § 164.31.

Persons not parties to the proceeding may file amicus briefs upon motion granted by the Administrative Law Judge. Such motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. *Id.*

C. Scheduling

Section 3(c)(2)(B)(iv) of FIFRA requires that a hearing shall be held and a determination issued within seventy-five (75) days after receipt of a request for hearing. The petitioner's request for hearing was received on or about November 13, 2000. In order to fulfill the 75-day time limit, the hearing is scheduled to commence on January 9, 2001. Accordingly, the parties are scheduled to submit prehearing exchanges on December 15, 2000, and rebuttals thereto on December 22, 2000. Pre-trial motions, stipulations and verified statements are due on December 29, 2000.

The 75-day period may be extended if all parties to the proceeding stipulate to such an extension. The date for commencement of the hearing, and the prehearing schedule, are subject to postponement, continuation or cancellation upon short notice. Such dates should be confirmed by contacting Bessie Hammiel at (202) 260–4865.

III. Public Docket

The public docket containing the case file in the matter referenced above (FIFRA Data Docket No. 216) is located at: Office of the Hearing Clerk, Room C400, 401 M St. S.W., Washington D.C. 20460. The case file can be viewed from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

(Authority: 38 FR 19371, 40 CFR 164.8)

Susan L. Biro,

Chief Administrative Law Judge.

[FR Doc. 00–31193 Filed 12–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6912–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Voda Petroleum Superfund Site, Clarksville City, Texas with the parties referenced in the **SUPPLEMENTARY INFORMATION** portion of this Notice.

The settlement requires the Settling Parties to pay a total of $589,200.00 in reimbursement of Past Response Costs, to the Hazardous Substance Superfund. The settlement includes a covenant not to sue pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may withdraw or withhold its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before January 8, 2001.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden (6SF–AC), U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6713. Comments should reference the Voda Petroleum Superfund Site, Clarksville City, Texas and EPA Docket Number 6–13–00. Comments should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Michael Boydston (6RC–S), U.S. Environmental Protection Agency 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–7376.

SUPPLEMENTARY INFORMATION:

Ark-LA-Tex Waste Oil Company
Baxter's Oil Service Inc.
Clements Oil Corporation
Lucent Technologies Inc.
Mobil Oil Corporation and its subsidiaries
SBC Holding, Inc.
Texas Utilities Mining Company; Texas Utilities Generating Company; and TXU Electric Company

Dated: November 24, 2000.

Julie Jensen,

Acting Regional Administrator, Region 6.

[FR Doc. 00–31194 Filed 12–6–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 28, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0933.

Title: Community Broadband Deployment Database Reporting Form.

Form No.: FCC Form 460.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, federal government, state, local or tribal government.

Number of Respondents: 150 respondents.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 37 hours.

Total Annual Cost: N/A.

Needs and Uses: Pursuant to section 410(b) of the Communications Act of 1934, as amended, on October 8, 1999, the Commission convened a Federal-State Joint Conference on Advanced Telecommunications Services to provide a forum for cooperative dialogue and information exchange between and among state and federal jurisdictions regarding the deployment of advanced telecommunications services. As part of this ongoing effort, a searchable on-line database of community broadband demand aggregation and deployment efforts is being established. The collection of information from respondents is entirely voluntary. The information will be used by the Commission to prepare reports that help inform consumers and policy makers at the state and federal levels of the status of deployment of broadband services. The Commission will use this information to better inform our understanding of broadband deployment in conjunction with our Congressionally required Section 706 reports. Absent this information collection, the Commission will lack an essential tool for assisting it in determining the effectiveness of its policies and fulfilling its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31172 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 30, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Sections 80.385, 80.475, and 90.303, Automated Marine Telecommunications Service (AMTS).

Form No.: N/A.

Type of Review: Existing collection in use without OMB control number.

Respondents: Individuals or households and businesses or other for-profit.

Number of Respondents: 20.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 10 hours.

Total Annual Cost: N/A.

Needs and Uses: The reporting requirements are necessary to require licensees of Automated Maritime Telecommunications System (AMTS) stations to notify TV stations and two organizations (the American Radio Relay League (ARRL), and Interactive Systems, Inc.) that maintain databases of AMTS locations for the benefit of amateur radio operators of the location of AMTS fill-in stations. Amateur radio operators use some of the same frequencies (219–220 MHz) as AMTS stations on a secondary, non-interference basis for digital message forwarding systems. Reporting requirements are necessary to require amateurs proposing to operate within close proximity of an AMTS station to notify the AMTS licensee as well as the ARRL. The information is used to update databases concerning AMTS locations for the benefit of amateur radio operators. If the collection of this information was not conducted, the database would become inaccurate and the ability to avoid interference problems would deteriorate.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31173 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 1, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 5, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0491.

Title: Section 74.991 Wireless cable application procedures.

Form No.: FCC 330/FCC 304.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Hours Per Response: 4.5 hours (0.5 respondent/4 hours attorney).

Frequency of Response: On occasion.

Cost to Respondents: $116,240.

Estimated Total Annual Burden: 50 hours.

Needs and Uses: Section 74.991 requires that a wireless cable application be filed on FCC Form 330 (3060–0062), Sections I and V, with a complete Form 494 appended. The application must include a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. The applicant must also, within 30 days of filing its application give local public notice in a newspaper. The specific data that must be included in the newspaper publication is contained in Section 74.991(c). The notice must be published twice a week for two consecutive weeks. The data is used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use. The data is also used to insure that applicants are qualified to become a Commission licensee and that proposals do not cause interference.

OMB Approval No.: 3060–0490.

Title: Section 74.902 Frequency assignments.

Form No.: FCC 330/FCC 327.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5.

Estimated Hours Per Response: 0.5 hours.

Frequency of Response: On occasion.

Cost to Respondents: $0.

Estimated Total Annual Burden: 2.5 hours.

Needs and Uses: Section 74.902 dictates that when a point-to-point ITFS station on the E and F MDS channels is involuntarily displaced by an MDS applicant, that the MDS applicant files the appropriate application for suitable alternative spectrum. The applications that would be used would be the FCC 327 (3060–0055) and the Form 330 (3060–0062). The burdens for these involuntarily displaced ITFS stations are included in the estimates for the FCC 327 and FCC 330. Additionally, Section 74.902(i) requires that a copy of this application be served on the ITFS licensee to be moved. The data will be used by the ITFS licensee to oppose the involuntary migration if the proposal would not provide comparable ITFS service and to ensure that the public interest is served.

OMB Control No: 3060–0939.

Title: E911–Second Memorandum and Order.

Form No: N.A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Frequency of Response: Occasional reporting requirement.

Total Annual Burden: 50 hours.

Total Annual Cost: 0.

Needs and Uses: Commercial Mobile Radio Service carriers and Public Safety Answering Points who can't agree on the choice of enhanced 911 transmission means and related technologies may ask the Commission to assist in reaching an accord. The requested information will be used by the Commission to enable it to fully participate in negotiations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31227 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 28, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0684.

Title: Amendment to the Commission's Rules Regarding a Plan for Sharing Costs of Microwave Relocation, WT Docket No. 95–157, FCC No. 00–123

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents: 2,000.

Estimate Time Per Response: 54 mins. (avg.).

Frequency of Response: Biennial and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 1,790 hours.

Total Annual Costs: $862,000.

Needs and Uses: On April 5, 2000, the FCC adopted an Order on Reconsideration which revised its rules to effectuate the relocation of fixed microwave incumbents from the 2 GHz band to clear spectrum for the development of PCS. In doing so, the FCC implemented its plan for PCS relocators and subsequent PCS licensees to share the costs of relocating existing 2 GHz microwave facilities, thus providing for a fair and efficient relocation process. These rules, which govern both the relocation and cost-sharing plans, foster the development of competitive broadband PCS service throughout the country, while permitting incumbent providers of microwave service to relocate to higher spectrum bands. This information collection facilitates dispute resolution for PCS relocators and microwave licensees independent of the Commission and assists PCS relocators and microwave licensees when they negotiate relocation agreements. Furthermore, the information collection helps two industry clearinghouses maintain a national database, determine reimbursement obligations of subsequent PCS entities under the Commission's cost-sharing rules, and notify subsequent PCS entities of their obligations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31171 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

December 1, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0192.

Title: Section 87.103, Posting Station License.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Recordkeeping.

Number of Respondents: 47,800.

Estimate Time Per Response: 15 mins.

Frequency of Response: Recordkeeping.

Total Annual Burden: 11,950 hours.

Total Annual Costs: None.

Needs and Uses: The recordkeeping requirement in 47 CFR Section 87.103 is necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in accordance with the requirements of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301, No. 2020 of the International Radio Regulations, and Article 30 of the Convention on International Civil Aviation. This requirement facilitates the quick resolution of any harmful interference problems and ensures that the station is operating in accordance with the appropriate rules, statutes, and treaties.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31228 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2452]

Petitions for Reconsideration of Action in Rulemaking Proceeding

November 29, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by December 22, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Amendment of 73.202(b) Table of Allotments FM Broadcast Stations (Windthorst, Texas).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31174 Filed 12–6–00; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Genetic Testing

AGENCY: Office of the Secretary, DHHS.

ACTION: Request for public comment on a proposed classification methodology for determining level of review for genetic tests.

SUMMARY: The Secretary's Advisory Committee on Genetic Testing (SACGT) was chartered to advise the Department of Health and Human Services on the medical, scientific, ethical, legal, and social issues raised by the development and use of genetic tests. SACGT recently completed its first report, Enhancing the Oversight of Genetic Tests (available at *http://www4.od.nih.gov/oba/sacgt.html*). One of SACGT's major recommendations was that all new genetic tests be reviewed by the Food and Drug Administration (FDA) before they are used for clinical care or public health purposes through ''new and innovative oversight mechanisms that will not limit the development of new tests or inordinately delay their availability.'' SACGT also recommended that FDA correlate the level of review applied to each genetic test with the level of scrutiny warranted by the test.

To assist FDA in determining which tests warrant greater scrutiny, SACGT is developing a classification methodology. A SACGT Working Group on Genetic Test Classification, composed of SACGT members and ad hoc experts, met on August 3, 2000, to identify criteria for assessing the risks and benefits of genetic tests that could serve as the basis for a classification scheme. The full Committee endorsed the working group's approach on August 4, 2000. Due to further analysis of the proposed approach and concerns raised by professional genetics and laboratory organizations about its practicality, SACGT revisited the initial proposal at its November 2–3 meeting. SACGT modified the methodology and agreed that additional input from public and professional organizations should be gathered. It is now seeking public comments on the rationale and feasibility of the proposed test classification methodology and several specific questions.

DATES: The public is encouraged to submit written comments on the proposed classification methodology by January 25, 2001 in order for SACGT to consider the comments at its next meeting in February 2001. The following mailing address should be used: SACGT, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 103, Bethesda, Maryland, 20892. SACGT's facsimile number is 301–496–9839. Comments can also be sent via e-mail to *hagas@od.nih.gov*. All public comments received will be available for public inspection at the SACGT office between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Questions about this request for public comment can be directed to Dr. Susanne Haga, by e-mail (*hagas@od.nih.gov*) or telephone (301–496–9838). The methodology will also be posted on SACGT's website for review and comment.

SUPPLEMENTARY INFORMATION:

Background

Decades of genetics research have brought about many important medical and public health advances. The pace of discovery in this area has enabled scientists to make rapid progress in understanding the role of genetics in many common yet complex diseases and conditions, such as heart disease, cancer, and diabetes. It also has increased knowledge that may lead to the development of new tests to identify these disease conditions in individuals, sometimes before symptoms occur. According to GeneTests, a genetic testing laboratory directory, genetic testing is clinically available for more than 400 diseases or conditions in more than 200 laboratories in the United States, and investigators are exploring the development of tests for an additional 338 diseases or conditions. However, most of the current genetic testing is for single gene disorders such as Huntington disease and cystic fibrosis.

Genetic tests can be performed for a number of purposes. Moreover, a test can be used in more than one way, such as when a test used for diagnostic purposes is also used to predict risk of disease. SACGT included the following types of testing within its definition: (1) an analysis performed on human DNA, RNA, genes, and/or chromosomes to detect heritable or acquired genotypes, mutations, phenotypes, or karyotypes that cause or are likely to cause a specific disease or condition; and (2) the analysis of human proteins and certain metabolites, which are predominantly used to detect heritable or acquired genotypes, mutations, or phenotypes. The purposes of both these types of genetic tests include predicting risks of disease, screening of newborns, directing clinical management, identifying carriers, and establishing prenatal or clinical diagnoses or prognoses in individuals, families, or populations. Not included in this definition are tests that are used primarily for other purposes, but that may contribute to diagnosing a genetic disease (*e.g.*, blood smear, certain serum chemistries), and tests conducted exclusively for forensic identification purposes.

In the past, many tests were developed to detect or confirm rare genetic diseases. More recently, tests have been developed to detect mutations that may be involved in or contribute to more common, complex conditions (such as breast, ovarian, and colon cancer and cardiovascular disease), the effects of which generally do not appear until later in life. Optimally, these tests are used to predict a person's predisposition to disease where there is a family history of the disease, and in general, such tests are not recommended for individuals without such a history. However, in the future, the use of predictive tests may expand and be offered to individuals without a family history of certain diseases and conditions, *e.g.*, common adult-onset disorders.

In Enhancing the Oversight of Genetic Tests, SACGT recommended that all new genetic tests be reviewed by the Food and Drug Administration (FDA) before they are used for clinical care or public health purposes. The Committee suggested that FDA's review be accomplished through ''new and innovative oversight mechanisms that will not limit the development of new tests or inordinately delay their availability.'' Determining the level of review required of a particular genetic test is crucial to ensuring that a test receives the appropriate level of review based on the characteristics of the test and its target disease or condition. In order to determine the appropriate level of review for genetic tests, SACGT concluded that a classification methodology was needed.

To assist FDA in determining the appropriate level of review, a working group on genetic test classification was convened in August, composed of SACGT members and ad hoc experts. The goal of the working group was to

develop criteria for assessing the risks and benefits of genetic tests that would serve as the basis for a classification scheme. In classifying genetic tests by the level of review warranted, the working group explored a number of factors that could be used, including test characteristics (analytical validity, clinical validity, and clinical utility), availability of safe and effective treatments, and the social consequences of a diagnosis or identification of risk status. They also considered whether the test would be for a common or an orphan (rare) disease or mutation; whether the test will be used for population-based screening or testing of individuals; whether the test is used to detect germline or somatic mutations; whether the test is primarily used for predictive or diagnostic purposes; the complexity of the test; the level of difficulty in interpreting test results; whether the mutation being tested for is highly or weakly penetrant (the likelihood of developing a disease or condition); and the availability of independent methods of confirmation to reduce the occurrence of false-positive test results.

Proposed Test Classification Methodology for Determining Level of Review for Genetic Tests

In SACGT's August draft of the classification methodology, the working group developed two levels of review and four criteria to be used in the determination of review level for genetic tests. The four criteria related to test volume; whether a test is to be used for population-based screening; the purpose of the test (predictive or diagnostic); and for predictive tests, the availability of an intervention, the predictive value of the testing process, or significant medical or social risks associated with the test. After further deliberation and discussion of the proposed test classification methodology, SACGT modified the methodology at its November meeting. The modified approach maintains the two levels of review initially proposed (Level I and Level II) but revises and reduces the number of criteria. The revised criteria relate to analytical validity, population-based screening, and frequency of disease. SACGT is seeking public comment on this revised test classification methodology.

Classification Structure and Levels of Review

SACGT determined that two levels of review would provide the most straightforward review process for all new genetic tests. In SACGT's proposed classification methodology, tests for rare diseases or conditions, with the exception of those used for population screening, would receive a Level I review and all other new genetic tests would receive a Level II review. While details of the review processes have yet to be fully defined, the Committee has outlined its expectations for each review level.

A Level I review would be a streamlined review process that would involve assurances of pre-test/post-test information according to a standard template and, possibly, data collection from existing resources. SACGT currently proposes that pre-test information include a description of the purpose of the test, the clinical condition for which the test is performed, the definition of the test (specific laboratory protocol), and evidence of analytical and clinical validity. Less evidence of data would be permitted in Level I. The Level II review process would include a detailed review of pre-test/post-test information and, possibly, new data collection initiatives.

SACGT suggests that both review levels consider the use of standards developed in consultation with professional organizations, consumer representatives, and other relevant groups; post-market adverse event reporting; and assurances for informed consent as appropriate. SACGT also suggests that, as appropriate, peer-reviewed literature could be used to substantiate claims of analytical and clinical validity.

Classification Criteria

The three criteria SACGT proposes to use in determining the level of review of a genetic test are analytical validity, population screening, and frequency of disease. The first criterion is an essential feature that all genetic tests should be able to demonstrate. The two other criteria classify genetic tests according to the number of people who may be affected by the disease or condition.

SACGT believes that all tests should be analytically valid and that no test should be considered for further review unless shown to be so. Analytical validity is defined as the ability of a test to measure or detect the analyte it is intended to measure or detect. An analyte is defined as the substance measured by a laboratory test, *e.g.,* DNA—mutation, allele, or chromosome, metabolites, or enzyme activity. Analytical validity includes analytical sensitivity (the probability that a test will detect an analyte when it is present in the sample) and analytical specificity (the probability that a test will be negative when an analyte is absent from a sample).

Population screening is the second criterion in the classification methodology. Population screening affects large numbers of people, most of whom are currently healthy. The risks of false-positive and false-negative test results need to be carefully evaluated. The type of follow-up for individuals who test positive must be clear and proven. In this schema, the definition of a population-based test is a test intended for use on a cluster of individuals who are identified as a group or population (>1000) on the basis of shared ethnicity, class, geographical location, gender, age, or other characteristics such as pregnancy, behavior (*e.g.,* smoking), physical traits (*e.g.,* baldness or height), or occupation in which the frequency of the disease allele or predispositional risk to be determined is higher than the frequency or risk in the general population. Carrier screening for Tay-Sachs disease in the Ashkenazi Jewish population would be considered a population-based test. Another example would be a test used for all newborns.

The third criterion SACGT proposes to include in the classification methodology is the frequency of the disease. This criterion would divide tests according to whether they test for a common disease or rare disease. SACGT proposes to define a rare disease or condition as having a prevalence of less than one in 2,000 individuals or an incidence less than one in 10,000 individuals.

There were a number of reasons why SACGT chose to divide genetic tests on the basis of whether it was for a rare disease versus a common disease. The Committee believes that tests for common diseases or conditions should receive a higher level of review for two reasons. First, the molecular and metabolic basis of common diseases is often complex. Recent findings have shown that the genetic etiology of common diseases and conditions is not as straightforward as traditional Mendelian disorders and likely involve the consideration of a number of other factors such as environment, lifestyle, and other genetic factors. For this reason, a higher level of review and larger clinical studies may be necessary to demonstrate the accuracy and validity of tests for common diseases or conditions. Second, tests for common diseases or conditions have the potential to affect a greater number of people.

The Committee wishes to make recommendations that will facilitate the continued development and availability

of tests for rare diseases and conditions. SACGT would not want to see the cost of, and time required for, review to become barriers to the provision of genetic tests for rare diseases, particularly those provided in the academic setting, given the limited financial resources and income of these laboratories.

Applying the Classification Methodology

These three criteria would be considered in a step-wise manner leading to a determination of the appropriate level of review warranted by a particular genetic test (see figure). When determining the level of review for a particular test, SACGT proposes that a test's analytical validity be ascertained first. If a test was shown to be not analytically valid, it would be automatically rejected. If a test was shown to be analytically valid, it would move on to the next criterion of population screening. In the Committee's view, tests used for population screening should receive a higher level of review because of the large number of people it would affect. If a test is to be used for population screening, it would receive a Level II review. If a test is not to be used for population screening, the third criterion would be applied. If the test is used to detect a rare disease or condition, it would receive a Level I review. Since it may take many years to gather large numbers of affected individuals for study, a Level I review would permit smaller data sets. Documentation would need to be provided to support the claim that a test is for a rare disease or condition. References may include peer-reviewed literature citations, specialized medical society proceedings, or governmental statistical publications. When no such studies or literature citations are available, the applicant may be able to demonstrate prevalence or incidence by providing credible conclusions from appropriate research or surveys. A rare disease test may sometimes warrant a Level II review. All other tests would receive a Level II review.

Questions on Which Comment Is Being Solicited

In order to ensure that a comprehensive and appropriate classification methodology is developed, SACGT would appreciate receiving public comment on the rationale and feasibility of the proposed test classification methodology. In addition, SACGT is interested in receiving input on the following specific questions:

1. Is the number of review levels appropriate? Should there be more than two levels? Should all genetic tests receive the same level of review?

2. Are the criteria of analytic validity, population screening, and frequency of disease appropriate for determining the proper review level? Should other criteria, such as the intended use of a genetic test (*e.g.*, diagnostic, predictive, carrier, prenatal, etc.) or clinical utility, be considered in the classification of tests? If so, how should they be incorporated into the methodology?

3. Are the proposed definitions for population and rare diseases appropriate?

4. SACGT has not proposed a specific threshold or minimum standard for analytical validity. Should a threshold for analytical validity be defined? If so, what should the standard be?

5. What characteristics of a rare disease test would raise the level of review from Level I to Level II?

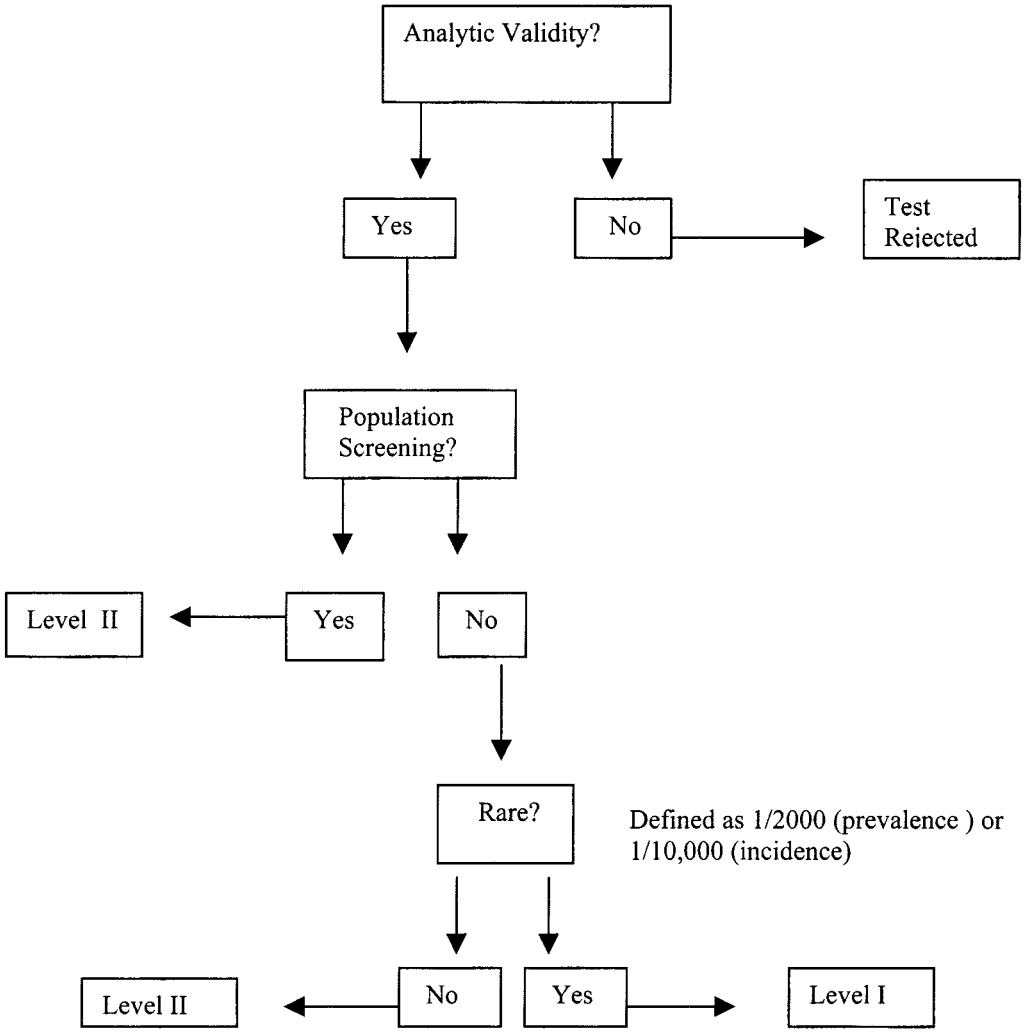
Dated: November 29, 2000.

Sarah Carr,

Executive Secretary, SACGT.

BILLING CODE 4140–01–P

Proposed Test Classification Scheme for Determining Level of Review of Genetic Tests



[FR Doc. 00–31218 Filed 12–6–00; 8:45 am]
BILLING CODE 4140–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the National Human Research Protections Advisory Committee

AGENCY: Office of Public Health and Science, Office for Human Research Protections, HHS.

ACTION: Notice of first meeting.

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Human Research Protections Advisory Committee.

The meeting will be open to the public, 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. Individuals planning on attending the meeting and who want to ask questions must submit their questions in writing in advance of the meeting to the contact person listed below.

DATES: The Committee will hold its next meeting on December 20–21, 2000. The meeting will convene from 8:30 a.m. to its recess at 4:30 p.m. on December 20th and resume at 9 a.m. to 3 p.m. EST on December 21st.

ADDRESSES: Bethesda Marriott-Pooks Hill, 515 Pooks Hill Road, Bethesda, Maryland 20814, (301) 897–9400.

FOR FURTHER INFORMATION CONTACT: Mr. Garey Rice, Administrative Officer, Office for Human Research Protections, 6100 Executive Boulevard, Room 310B (MSC 7507), Rockville, Maryland 20892–7507, (301) 402–6003. The electronic mail address is: *gr66s@nih.gov.*

SUPPLEMENTARY INFORMATION: The National Human Research Protections Advisory Committee was established on June 6, 2000 to provide expert advice and recommendations to the Secretary of HHS, Assistant Secretary for Health, the Director, Office for Human Research Protections, and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects.

Dated: November 30, 2000.

Greg Koski,

Director, Office for Human Research Protections.

[FR Doc. 00–31162 Filed 12–6–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Final PHS Policy for Instruction in the Responsible Conduct of Research

AGENCY: Office of the Secretary, HHS.

ACTION: Announcement of Final ''PHS Policy for Instruction in the Responsible Conduct of Research.''

SUMMARY: The Office of Research Integrity (ORI) in collaboration with the Agency Research Integrity Liaison Officers for each of the Public Health Service (PHS) Operating Divisions, announced on July 21, 2000, (65 FR 45381) the availability for public comment of a Draft PHS Policy for Instruction in the Responsible Conduct of Research (RCR) for extramural institutions receiving PHS funds for research or research training. The comment period closed on September 21, 2000.

In response to public comment, ORI and the PHS agencies have made substantial revisions to the draft policy and hereby announce the final ''PHS Policy on Instruction in the Responsible Conduct of Research.'' The final policy, a summary of comments and revisions to the policy made in response thereto, a list of available resources for RCR education programs, and Frequently Asked Questions and Answers on the policy are located at <http://ori.hhs.gov> or may be obtained from ORI at 5515 Security Lane, Suite 700, Rockville, Maryland 20852, Phone: 301–443–5300. Public comments on the draft policy are available for public inspection on ORI's premises from Monday-Friday between 9 a.m. and 5 p.m. Please call ORI for an appointment time.

FOR FURTHER INFORMATION CONTACT: Barbara Bullman, J.D., Senior Program Analyst, Division of Education and Integrity, Office of Research Integrity, Rockwall II, Suite 700, 5515 Security Lane, Rockville, MD 20852, 301–443–5300.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 00–31152 Filed 12–6–00; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1504]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry on How to Use E–Mail to Submit Information to the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on How to Use E–Mail to Submit Information to the Center for Veterinary Medicine'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 2000 (65 FR 57192), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0454. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: November 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31150 Filed 12–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–667]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Alternate Quality Assessment Survey; *Form No.:* HCFA–667 (OMB# 0938–0650); *Use:* The HCFA–667 is used in lieu of an onsite survey for those Clinical Laboratories Improvement Amendment (CLIA) laboratories with good performance as determined by their last onsite survey. This form is designed to determine current CLIA compliance as well as prepare laboratories for future onsite surveys; *Frequency:* Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government; *Number of Respondents:* 4,000; *Total Annual Responses:* 2,000; *Total Annual Hours:* 10,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–31180 Filed 12–6–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–0108]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare coverage of liver transplants; *Form No.*: HCFA–R–108 (OMB# 0938–0580); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of liver transplants performed on medicare beneficiaries.; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 12; *Total Annual Responses:* 12; *Total Annual Hours:* 2,110.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 29, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–31181 Filed 12–06–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–0170]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Lung Transplants; *Form No.:* HCFA–R–170 (OMB# 0938–0670); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of lung transplants performed on Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 6; *Total Annual Responses:* 6; *Total Annual Hours:* 900.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Division of HCFA Enterprise Standards.

[FR Doc. 00–31182 Filed 12–6–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day; Proposed Collection: IHS Scholarship Program Application

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection

Title: 0917–0006, ''IHS Scholarship Program Application.'' This collection was formerly titled, ''Application for Participation in the IHS Scholarship Program''. *Type of Information Collection Request:* 3-year extension, with change, of previously approved information collection, 0917–0006, ''Application for Participation in the IHS Scholarship Program'' which expires April 4, 2001. *Form Number(s):*

IHS–856, 856–2, through 856–8, IHS–815. IHS–816, IHS–818, D–02, F–02, F–04, G–02, G–04, H–07, H–08, J–06, J–07, K–03, K–04, and L–03. Reporting formats are contained in an IHS Scholarship Program application booklet. *Need and Use of Information Collection:* The IHS Scholarship Branch needs this information for program administration and uses the information to solicit, process and award IHS Pre-Graduate, Preparatory and/or Health Professions Scholarship grantees and monitor the academic performance of awardees, to place awardees at payback sites, and for awardees to request additional program. The IHS Scholarship Program is streamlining the application to reduce the time needed by applicants to complete and provide the information, and plans on using information technology to make the application electronically available on the Internet.

Affected Public: Individuals, not-for-profit institutions and State, local or Tribal Government.

Type of Respondents: Students pursuing health care professions.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hour(s).

Data collection instrument(s)	Number of respondents	Responses per respondent	Total annual response	Burden hour per response*	Annual burden hours
Scholarship Application (IHS–856)	875	1	875	1.50 (90 min)	1,312
Checklist (856–2)	875	1	875	0.13 (8 min)	114
Course Verification (856–3)	875	1	875	0.70 (42 min)	613
Faculty/Employer Application (856–4)	1,750	1	1,750	0.83 (50 min)	1,453
Justification (856–5)	875	1	875	0.75 (45 min)	656
Federal Debt (856–6)	875	1	875	0.13 (8 min)	114
MPH only (856–7)	50	1	50	0.83 (50 min)	42
Accept/Decline (856–8)	875	1	875	0.13 (8 min)	114
Stipend Checks (D–02)	100	1	100	0.13 (8 min)	13
Enrollment (F–02)	1,400	1	1,400	0.13 (8 min)	182
Academic Problem/Change (F–04)	100	1	100	0.13 (8 min)	13
Request Assistance (G–02)	217	1	217	0.13 (8 min)	28
Summer School (G–04)	193	1	193	0.10 (6 min)	19
Contract (818)	1,400	1	1,400	0.27 (16 min)	378
Placement (H–07)	250	1	250	0.18 (11 min)	45
Graduation (H–08)	250	1	250	0.17 (10 min)	43
Site Preference (J–04)	150	1	150	0.13 (8 min)	20
Travel Reimb (J–05)	150	1	150	0.10 (6 min)	15
Status Report (K–03)	250	1	250	0.25 (15 min)	63
Preferred Assignment (K–04)	200	1	200	0.75 (45 min)	150
Deferment (L–03)	20	1	20	0.13 (8 min)	3
Total	11,730				5,390

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information; (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

SEND COMMENTS AND REQUESTS FOR FURTHER INFORMATION: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601 or call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: lhodahkw@hqe.ihs.gov.

COMMENT DUE DATE: Your comments regarding this information collection are best assured of having their full effect if received on or before February 5, 2001.

Dated: November 29, 2000.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 00–31153 Filed 12–6–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection: Comment Request; Revision of OMB No. 0925–0001/exp.02/28/01, ''Research and Research Training Grant Applications and Related Forms''

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Extramural Research, 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: Research and Research Training Grant Applications and Related Forms.

Type of Information Collection Request: Revision, OMB 0925–0001, Expiration Date 02/28/01. Form

Numbers: PHS 398, 2590, 2271, 3734 and HHS 568.

Need and Use of Information Collection: The application is used by applicants to request Federal assistance for research and research-related training. The other related forms are used for trainee appointment, final invention reporting, and to relinquish rights to a research grant.

Frequency of response: Applicants may submit applications for published receipt dates. If awarded, annual progress is reported and trainees may be appointed or reappointed.

Affected Public: Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Type of Respondents: Adult scientific professionals. The annual reporting burden is as follows:

Estimated Number of Respondents: 114,407;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: 12.040; and

Estimated Total Annual Burden Hours Requested: 1,377,548. The estimated annualized cost to respondents is $48,214,180.

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 enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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 Ms. Jan Heffernan, Division of Grants Policy, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 1196, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0940, or E-mail your request, including your address to: *Heffernj@OD.NIH.GOV*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before February 5, 2001.

Dated: November 29, 2000.

Carol Tippery,

Acting Director, OPERA, NIH, GOV.

[FR Doc. 00–31213 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Call for Nominations for the National Cancer Institute Director's Liaison Group

The National Cancer Institute (NCI), the federal government's primary agency for cancer research, is seeking nominations for five new members of the NCI Director's Consumer Liaison Group (DCLG) who will be appointed in July 2001. The DCLG helps NCI to identify appropriate advocates to serve on its program and policy advisory committees, and it serves as a channel for consumer advocates to voice their views and concerns. The DCLG is a federal chartered advisory committee of the National Cancer Institute (NCI). It consists of 15 consumer advocates who are involved in cancer advocacy and who reflect the diversity among those whose lives are affected by cancer.

NCI brings together these advocates from many communities to advise and make recommendations to the Director, NCI from the consumer advocate perspective on a wide variety of issues, programs and research priorities. All DCLG members must be U.S. citizens. Specifically the DCLG members:

- Help develop and establish processes, mechanisms, and criteria for identifying appropriate consumer advocates to serve on a variety of program and policy advisory committees responsible for advancing the mission of the NCI.
- Serve as a primary forum for discussing issues and concerns and exchanging viewpoints that are important to the broad development of the NCI programmatic and research priorities.
- Establish and maintain strong collaborations between the NCI and the cancer advocacy community to reach common goals.

Eligibility Requirements for Individual Members

To serve on the DCLG, a member must meet the following minimum eligibility requirements:

- Be involved in the cancer experience as a cancer survivor, a person affected by the suffering and consequences of cancer, or a professional or volunteer who works with survivors or those affected.
- Represent a constituency (formally or informally) with whom she or he communicates regularly on cancer issues and be able to serve as a conduit for information both to and from his/her constituency.

DCLG members must be committed to participating in all activities of the DCLG which includes at least two meetings a year in Bethesda.

Criteria for Evaluating Individual Candidates

Nominees who meet the minimum eligibility requirements will be further assessed based on the following criteria:

- Cancer Advocacy experience
- Ability to communicate effectively
- Ability to represent broad issues, think ''globally''
- Ability to contribute to an effective group process
- Leadership ability

Characteristics of the DCLG

In addition to the criteria for individual candidates, the following characteristics of the DCLG as a group are intended to ensure that it reflects the breadth and diversity of the consumer advocacy community:

- Multicultural diversity
- A broad mix of cancer sites
- Representation of the medically underserved
- Men and women
- A range of organizations (local/regional and national)
- Age diversity
- Geographic diversity (rural/urban mix)

Selection Process

A call for nominations is disseminated annually to a broad range of groups, including local, regional and national organizations, to encourage nominations of candidates reflecting the diversity sought for the DCLG. All nominees are screened for eligibility, then evaluated according to the criteria. A list of highly qualified candidates who reflect balance and diversity of representation is forwarded to the Director, NCI, who selects the DCLG members. The original members of the DCLG endorsed this process, which will be used to select future members.

NCI encourages nomination of candidates reflecting the diversity sought on the DCLG. Nominations can be made by organizations, including local/regional and national groups, or individuals, including self-nominations. To receive a nomination package for the DCLG, send your name, advocacy/voluntary organization affiliation (if any), address and phone number to the Office of Liaison Activities, NCI, c/o Palladian Partners, 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910, FAX (301) 650 8676. Nominations must be postmarked by February 15, 2001.

Dated: November 30, 2000.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

[FR Doc. 00–31197 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Immunoglobulin-G Constant Region Fusion Proteins as Molecular Weight Markers

Stephen V. Angeloni, Ph.D. (NIDDK)
DHHS Reference No. E–292–00/0, Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

The technology portrayed in this invention is available through a Biological Materials License as a research tool and for use in diagnostic tests. Current methods of protein detection and size determination can be made more efficient by the utilization of more stable protein markers that cover a wider range of molecular weights for western blotting and other diagnostics applications. As embodied in this invention, construction of recombinant proteins containing constant regions of Immunoglobulin-G from mouse, rabbit and other species, allow the production of protein standards that can be detected simultaneously on the same western blot as the sample proteins. Such markers will increase the accuracy in determining sample protein size and in combination with recombinant or chemically labeled second antibodies, will allow the detection of an increased number of sample proteins simultaneously on the same blot.

A Forward Mutational Assay for Use With PhiX174 Transgenic Mice

Carrie R. Valentine (FDA), Heinrich V. Malling (NIEHS), Bentley A. Fane (Univ. of Arizona)

DHHS Reference No. E–254–00/0 filed 11 July, 2000, Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; email: ms482m@nih.gov

The aforementioned invention is currently available through a Biological Materials License as a research tool. This assay can detect 19 different base substitutions at 13 different sites in gene A of the PhiX174 transgene present in the transgenic Malling mouse and is an improvement over the previous reversion assay, which was limited to mutation at a single site. The ability to detect mutations at multiple sites will allow the detection of mutagenic test compounds with affinity for different sequence contexts, while retaining the advantage of the inexpensive recovery of this transgene, which is by electroporation.

The evaluation of new drugs for their potential for inducing mutations is a necessary part of evaluating the safety of pharmaceuticals or environmental chemicals. One advantage of this assay is that it may be automated to be performed in microplate dishes. In addition, this assay has the potential to be utilized in a microarray system because of the limited number of possible mutations. Therefore, it would be more rapid and less expensive than the currently used transgenic systems.

Adult Human Dental Pulp Stem Cells in vitro and in vivo

Dr. Songtao Shi *et al.* (NIDCR)
DHHS Reference No. E–233–00/0 filed 21 July 2000, Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

Many individuals with ongoing and severe dental problems are faced with the prospect of permanent tooth loss. Examples include dentinal degradation due to caries or periodontal disease; (accidental) injury to the mouth; and surgical removal of teeth due to tumors associated with the jaw. Clearly, a technology that offers a possible alternative to artificial dentures by designing and transplanting a set of living teeth fashioned from the patient's own pulp cells would greatly improve the individual's quality of life.

The NIH announces a new technology wherein dental pulp stem cells from an individual's own postnatal dental pulp tissue (one or two wisdom teeth) can potentially be used to engineer healthy living teeth. This technology is based upon the discovery of a subpopulation of cells within normal human dental pulp tissue that has the ability to grow and proliferate in vitro. These (dental pulp) stem cells can be induced under defined culture conditions to form calcified nodules in vitro and have been shown to differentiate into a dentin/pulp like structure in vivo.

PTH2 and PTH1 Receptor Ligands

Ted B. Usdin and Samuel R. Hoare (NIMH)
DHHS Reference No. E–123–99/1 filed 15 June 2000, Licensing Contact: Norbert Pontzer; 301/496–7735, ext. 284; e-mail: pontzern@od.nih.gov

Parathyroid hormone receptors found on osteoblasts in bone and renal tubule cells in kidney elevate blood calcium levels when stimulated by parathyroid hormone (PTH) and PTH-related protein (PTHrP). Excessive secretion of PTH from the parathyroid gland results in primary hyperparathyroidism. Production of PTHrP by various tumors results in humoral hypercalcemia of malignancy. In both of these conditions, excessive blood calcium levels lead to clinically significant morbidity. A parathyroid hormone antagonist could therefore have therapeutic value.

Until now, no effective antagonists for the classical parathyroid hormone receptor (PTH1 receptor) were known. This invention describes a peptide which binds with high affinity ($K_d = 1.3 \pm 0.1$ nM, dissociation $T_{1/2} = 14$ min.) and acts as purely competitive antagonist at the PTH1 receptor. This novel peptide is related to

tuberoinfundibular peptides of 39 residues (TIP39), also described in this invention, which binds to a related receptor. Deletion of amino acids from the N-terminus of TIP39 resulted in the high affinity PTH1 receptor antagonist peptide described here. This peptide may be used therapeutically to treat excessive blood calcium caused by PTH or PTHrP, other pathology caused by PTHrP, to demonstrate the utility of parathyroid hormone receptor antagonism in the treatment of hypercalcemia or other conditions, or to help screen for other antagonists at the parathyroid hormone receptor.

Dated: November 29, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–31216 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 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 Center for Complementary and Alternative Medicine Special Emphasis Panel NCCAM AIDS SEP–H08.

Date: December 12, 2000.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Democracy II, Ste. 106, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cecelia Maryland, Grants Technical Assistant, National Center for Complementary and Alternative Medicine, National Institutes of Health, Building 31, Room 5B50, Bethesda, MD 20892, (301) 480–2419.

Dated: November 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31206 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel, SCOR-Impact of Injury on the Immature Pulmonary Circulation.

Date: January 10, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Deborah P. Beebe, PhD, Chief, Rockledge Center II, 6701 Rockledge Drive, Suite 7178, Bethesda, MD 20892–7924, 301/435/0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31199 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 522b(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 Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: January 7–9, 2001.

Time: 7 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P Clark, PhD, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301/435–0310.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31200 Filed 12–6–00; 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) 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–7 J2.

Date: December 21, 2000.

Time: 3:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK/DEA/Review Branch, 2 Democracy Boulevard, 6707 Democracy Boulevard, MSC 5452, Room #659, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue 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: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31205 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Close 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 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 6, 2000.

Time: 11 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, Room 5As37B, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the require and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institute of Health, HHS)

Dated: December 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31198 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes 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) 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–5(J2).

Date: January 11–12, 2001.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Francisco O. Calvo, PhD., Deputy Chief, Review Branch, DEA NIDDK, Room 655, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897

(Catalogue 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: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31203 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communications Disorders Special Emphasis Panel.

Date: January 9, 2001.

Time: 2:00 pm to 4:30 pm.

Agenda: To review and evaluate contract proposals.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Craig A. Jordan, Phd, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31204 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 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 Mental Health Special Emphasis Panel.

Date: December 11, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Henry J. Haigler, Phd., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31208 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 of Dental and Craniofacial Research Special Emphasis Panel, 01–12, Review of R03 Grants.

Date: December 7, 2000.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

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: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–23, Review of R01s.

Date: December 12, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

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: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 01–11, Review of R13 Grants.

Date: December 14, 2000.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

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: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–13, Review F32 & R03 Grants.

Date: December 18, 2000.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

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: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–22, Review of R01s.

Date: January 24, 2001.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31209 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 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 Alcohol Abuse and Alcoholism Special Emphasis Panel Special Emphasis Panel.

Date: December 8, 2000.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism National Instituted of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

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. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31212 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 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 clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: December 18, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Milton Corn, MD, Associate Director, Office of Extramural Programs, National Library of Medicine, National Institutes of Health, One Rockledge Centre, Suite 301, 6705 Rockledge Drive, MSC 6075, Bethesda, MD 20892–6075, 301–496–4621.

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. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31196 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 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 Library of Medicine Special Emphasis Panel, Fact CT–MR Registration For Image Guided Procedures.

Date: December 19, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Milton Corn, MD, Associate Director, Office of Extramural Programs, National Library of Medicine, Rockledge One, Suite 301, 6705 Rockledge Drive, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31211 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 20, 2000, 4 pm to November 20, 2000, 5 pm, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on November 17, 2000, 65 FR 69568–69570.

The meeting will be held on December 4, 2000. The time and location remain the same. The meeting is closed to the public.

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31202 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 28, 2000, 1 pm to November 28, 2000, 2:30 pm, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on November 17, 2000, 65 FR 69568–69570.

The meeting times have been changed to 3:30 pm to 4:30 pm. The date and location remain the same. The meeting is closed to the public.

Dated: November, 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31201 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel.

Date: December 5, 2000.

Time: 9:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Micheal Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

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: Center for Scientific Review Special Emphasis Panel.

Date: December 5, 2000.

Time: 2:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

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: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Anne Schaffner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7850, Bethesda, MD 20892, (301) 435–1239, schaffna@csr.nih.gov.

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: Center for Scientific Review Special Emphasis Panel.

Date: December 13, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Nunn, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892.

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: Center for Scientific Review Special Emphasis Panel.

Date: December 14–15, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, (301) 435–1789.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jerry L. Klein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Heath, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 2:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784, mcfarlag@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2000.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 2000.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890, (301) 435–1159, ameros@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 2000.

Time: 10:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla D. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31207 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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 association with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 4, 2000.

Time: 3:30 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

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: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 2000.

Time: 4:30 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–435–1017, leving@csr.nih.gov

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: Center for Scientific Review Special Emphasis Panel.

Date: December 13, 2000.

Time: 11 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

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: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

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: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov

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: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

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: Center for Scientific Review Special Emphasis Panel.

Date: December 18, 2000.

Time: 2:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David M. Monsees, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov

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: Center for Scientific Review Special Emphasis Panel.

Date: December 19, 2000.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 2000.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7844, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 2000.

Time: 10:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institues of Helath, HHS)

Dated: November 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–31210 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Methods and Compositions for the Detection and Treatment of Insulin Dependent Diabetes

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)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: US Patent Application Serial Number 08/548,159 filed 10/95 by McClaren, Notkins, Lan, and Li, and foreign counterparts, and US Patent Application Serial Number 08/514,213 filed 8/95, and foreign counterparts, by McClaren, Notkins, and Lan—both entitled ''Methods and Compositions for the Detection and Treatment of Insulin Dependent Diabetes'' to BioSeek Inc., of New York, NY. The United States of America is an assignee of the patent rights to these inventions.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before February 5, 2001 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: John Rambosek, Ph.D. Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Su9ite 325, Rockville, MD 20852–3804; Email:jr312d@nih.gov; Telephone: (301) 496–7056, ext. 270; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: Insulin-dependent diabetes mellitus (IDDM) affects close to one million people in the United States. It is autoimmune disease in which the immune system produces antibodies that attack the body's own insulin-manufacturing cells in the pancreas. Patients require daily injections of insulin to regulate blood sugar levels. The invention identifies two proteins, named IA–2 and IA–2β, that are important markers for type I (juvenile, insulin-dependent) diabetes. IA–2/IA–2β, when used in diagnostic tests, recognized autoantibodies in 70 percent of IDDM patients. Combining IA–2 and IA–2β with other known markers increased the level of identification to 90 percent of individuals with IDDM. Moreover, the presence of autoantiboides to IA–2 and IA–2β in otherwise normal individuals was highly predictive in identifying those at risk of ultimately developing clinical disease. It is now possible to develop a rapid and effective test that can screen large populations for IDDM. In addition, IA–2 and IA–2β are candidates for immune tolerance and prevention of disease development. The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective license may be limited to use of the invention for diagnostic and therapeutic uses in the detection and treatment of diabetes. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes 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 in response 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: November 30, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–31215 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Compositions and Methods for the Stimulation of Proliferation and Differentiation of Pancreatic Cells Ex Vivo

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in any U.S. patents 5,888,705 (03/30/1999) and 5,587,309 (12/24/1996) or foreign applications corresponding to PCT Patent Application PCT/US95/00521, entitled ''Compositions and Method of Stimulating the Proliferation and Differentiation of Human Fetal and Adult Pancreatic Cells Ex Vivo'' published as WO 95/29989 (11/09/1995) to PanCel Corp., of California. The prospective exclusive license may be limited to the development of therapeutic applications, including compositions and methods using adult pancreatic cells, to be used in the treatment of diabetes.

DATES: Only written comments and/or applications for a license which are received by NIH on or before February 5, 2001, will be considered.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comment and other materials relating to the contemplated license should be directed to Susan S. Rucker, J.D., Patent and Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext 245; fax: 301/402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patents and patent applications describe the use of the compound Hepatocyte Growth Factor/Scatter Factor (HGF/SF) for the stimulation of proliferation and differentiation of pancreatic cells. Upon exposure to HGF/SF the pancreatic cells proliferate and differentiate and are able to produce insulin. The ability to stimulate pancreatic cells to proliferate and differentiate into cells capable of producing insulin may provide a means

for improving the treatment of Type I and Type II diabetes.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license (*i.e.,* a completed ''Application for License to Public Health Service Inventions'') in the indicated exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act 35 U.S.C. 552.

Dated: November 29, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–31217 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Proposed Collection; Comment Request; Customer and Other Partners Satisfaction Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Warren Grant Magnuson Clinical Center (CC), 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: Generic Clearance for Satisfaction Surveys of Customer and Other Partners.

Type of Information Collection Request: Extension (OMB control number: 0925–0458).

Need and Use of Information Collection: The information collected in these surveys will be used by Clinical Center personnel: (1) To evaluate the satisfaction of various Clinical Center customers and other partners with Clinical Center services; (2) to assist with the design of modifications of these services, based on customer input; (3) to develop new services, based on customer need; and (4) to evaluate the satisfaction of various Clinical Center customers and other partners with implemented service modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by, Clinical Center management to enhance the services and operations of our organization.

Frequency of Response: The participants will respond yearly.

Affected public: Individuals and households; businesses and other for profit, small businesses and organizations.

Types of respondents: These surveys are designed to assess the satisfaction of the Clinical Center's major internal and external customers with the services provided. These customers include, but are not limited to, the following groups of individuals: Clinical Center patients, family members of Clinical Center patients, visitors to the Clinical Center, National Institutes of Health investigators, NIH intramural collaborators, private physicians or organizations who refer patients to the Clinical center, volunteers, vendors and collaborating commercial enterprises, small businesses, regulators, and other organizations. The annual reporting burden is as follows:

TABLE 1.—THREE YEAR BURDEN ESTIMATE

Customer	Type of survey	Estimated number to be surveyed	Expected response rate (percent)	Time to complete survey (minutes)	Estimated burden hours
Clinical Center Patients	Questionnaire Telephone	11,100	66	20	2436.6
Family Members of Patients	Questionnaire/ Post Card	8500	38	10	533.3
Visitors to the Clinical Center	Questionnaire/ Post Card	3500	15	10	87.5
Former physician employees and trainees	Electronic	650	35	10	38.2
Guest workers/Guest researchers	Electronic	950	60	22	210
Extramural collaborators	Electronic	600	30	15	45
Vendors and Collaborating Commercial Enterprises	Questionnaire/ Fax Back	9500	17	18	475
Professionals and Organizations Referring Patients	Fax Back	9000	30	28	1250
Regulators	Fax Back	85	82	19	22
Volunteers	Questionnaire	850	58	28	230
Total (3 Years)			n=16,812		5,327.6
Total (1 Year)			n=5,604		1,776.0

Estimated costs to the respondents consists of their time; time is estimated using a rate of $10.00 per hour for patients and the public; $30.00 for vendors, regulators, organizations and $55.00 for health care professionals. The estimated annual costs to respondents for each year for which the generic clearance is requested is $24,531 annually. A contract has been let with a vendor to provide assistance in survey administration. The estimated annual cost of this contract is $25,000. There is no capital costs to report.

Requests 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 functions of the Clinical Center and the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, to obtain a copy of the data collection plans and instruments, or to submit comments, contact: Dr. David K. Henderson, Deputy Director for Clinical Care, Warren G. Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C 146, 9000 Rockville Pike, Bethesda, Maryland 20892, or call non-toll free: (301) 496–3515, or e-mail your request or comments, including your address to dhenderson@cc.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before February 5, 2001.

Dated: November 18, 2000.

David K. Henderson,

Deputy Director for Clinical Care, CC.

[FR Doc. 00–31214 Filed 12–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4621–N–02]

Community Planning and Development Formula Programs: Assisting Persons With Disabilities—Recipients' Affirmatively Furthering Fair Housing Responsibilities and Involvement of Persons With Disabilities in Planning Actions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, and Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reemphasize the responsibility of Community Planning and Development formula grant program recipients to: (1) Affirmatively further fair housing which includes analyzing compliance with the multifamily design and construction requirements of the Fair Housing Act (the Act); and (2) include individuals with disabilities in the citizen participation process for the development of Consolidated Plans and Annual Action Plans.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1145 (this is not a toll-free number), or Terry Buss, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2504 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Every three to five years, each State and local government that is a recipient of HUD formula grant funds through the Community Development Block Grant Program, HOME Investment Partnerships Program, Housing Opportunities for Persons With AIDS Program or the Emergency Shelter Grant Program must submit a complete Consolidated Plan that assesses its priority housing and homeless needs, including the needs of persons with disabilities, and establishes a strategic plan for addressing these needs. (In this notice, the term ''jurisdictions'' (or ''jurisdiction'') refers to States and local governments that are recipients of this funding.)

Annually, jurisdictions must submit the Action Plan component of the Consolidated Plan which describes how these funds will be used. When preparing its Consolidated Plan and its Action Plans, the jurisdiction must include the participation of its citizens in accordance with its citizen participation plan. The citizen participation plan must provide for and encourage citizens to participate in the development of the Consolidated Plan, including any substantial amendments to the Consolidated Plan, and preparation of the Annual Performance Report. Jurisdictions are also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

In its annual submission to HUD, each recipient jurisdiction must submit a certification required by the Community Development Block Grant regulations (24 CFR 570.601(a)(2)) and the Consolidated Plan regulations (24 CFR 91.225(a)(1), 91.325(a)(1) [States] and 91.425(a)(1) [Consortia]) that it will affirmatively further fair housing. The jurisdiction's affirmatively furthering certification means that the jurisdiction will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions taken. If the jurisdiction is not undertaking these actions, the Department may reject the certification and disapprove the Consolidated Plan.

The analysis of impediments (AI) to fair housing choice includes an assessment of conditions, both public and private, affecting fair housing choice. The amendments to the Act in 1988 made it unlawful to discriminate against persons because of disability, including the failure to make multifamily residential structures built for first occupancy after March 13, 1991 accessible to persons with disabilities. The Act requires that all units in an elevator building with four or more units be accessible to persons with disabilities. In a non-elevator building with four or more units, all ground floor units must be accessible to such persons. These requirements apply whether the building is privately or publicly constructed and owned.

Recommended Actions To Meet These Responsibilities

HUD encourages jurisdictions that are recipients of funds covered by the Consolidated Plan to make outreach efforts to ensure that persons with disabilities are consulted and have an equal opportunity to participate in developing the jurisdiction's analysis of needs and plans for the use of Federal and other resources. HUD staff in the State and Area Community Planning and Development and Fair Housing and Equal Opportunity Offices can be consulted in helping develop outreach efforts and a significant amount of information is found on HUD's homepage on the Internet at www.hud.gov.

During the new five-year Consolidated Plan cycle that begins in Fiscal Year 2001, Consolidated Plan jurisdictions are strongly encouraged to periodically review and update their AIs, as appropriate, to give the same attention to impediments to fair housing choice for persons with disabilities as is provided for other bases of discrimination such as race that have been prohibited by the Act since its inception in 1968. HUD in its review of Annual Action Plan submissions and during on-site reviews, will consider whether jurisdictions are giving appropriate attention in their Action Plans to compliance with the accessibility requirements of the Act by both private and public housing providers.

Jurisdictions are also encouraged to take other actions to advance fair housing choice for persons with disabilities in support of their certification to affirmatively further fair housing. Recent HUD House Appropriations report language would direct HUD, when reviewing Consolidated Plans, to take into consideration a community's adoption of a building code that satisfies the Act's accessibility requirements along with the community's other efforts to remove impediments to fair housing (see H. Rep. 106–674).

With respect to building codes, HUD encourages elected officials and those engaged in housing and community development programs to determine whether the jurisdiction's building code is inconsistent in any respect with the Act's accessibility requirements. HUD's recently completed review of the four model building codes for consistency with the Act can assist with this determination because most local building codes are derived from one or more national model codes. HUD's final report reviewing the model building codes was published in the **Federal Register** on March 23, 2000 (65 FR 15740).

In its March 23, 2000 final report, HUD identified those areas of the model building codes that were not consistent with the accessibility requirements of the Act, and included recommended language for addressing these variations. Since that time, HUD has been working with the model code organizations and other interested persons in developing proposed code language to address the findings in the Department's final report with respect to the International Building Code 2000.

HUD also encourages jurisdictions to find ways to inform builders and architects as early as possible in the project design phase, but certainly no later than the issuance of a building permit, of the need to comply with the accessibility requirements of the Act.

Dated: December 1, 2000.

Joseph A. D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 00–31120 Filed 12–6–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Zoological Society of San Diego, San Diego, CA, PRT–036157

The applicant requests a permit to import three male and three female captive born Przewalski's wild horse (*Equus p. przewalskii*) from the Calgary Zoo, Calgary Alta, Canada for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: Bell Bud, Houston, TX, PRT–036529

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Triple S Game Farm, Edmond, OK, PRT–35441

The applicant requests a permit to export biological samples of the following endangered pheasant species: imperial (*Lophura imperialis*), Edward's (*Lophura edwardsi*), Swinhoe's (*Lophura swinhoii*), white-eared (*Crossoptilon crossoptilon*), brown-eared (*Crossoptilon mantchuricum*), cheer (*Catreus wallichi*), Elliot's (*Syrmaticus ellioti*), bar-tailed (*Syrmaticus humiae*), mikado (*Syrmaticus mikado*); to Dr. Ettore Randi, National Institute of Wildlife, Ozzano Emilia, Italy, for scientific research for the purpose of enhancement of the survival of the species.

Applicant: Marc A. Cheramie, Golden Meadow, LA, PRT–036303

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jeffrey R. Powell, Yale University, Dept. of Ecology and Evolutionary Biology, New Haven CT, PRT–036010

The applicant requests a permit to re-export 171 blood samples collected from Galapagos tortoises (*Geochelone nigra*) to Michel C. Milinkovitch, Unit of Evolutionary Genetics, Dept. of Molecular Biology, Free University of Belgium, Gosselies, Belgium, for the purpose of scientific research. The samples were originally collected by the applicant from wild tortoises in the Galapagos Islands, Ecuador, and imported to the United States under permit no. US784934.

Applicant: Wildlife Conservation Society, Bronx, NY, PRT–811776

The applicant requests re-issuance of a permit to import feathers dropped from wild and captive-born birds, which are obtained through various international institutions and through collecting conducted during field studies, for the purpose of the scientific research. This notification covers activities conducted by the applicant over a five year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Bryce W. Smith, Bay City, OR, PRT–036348

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

Applicant: J. Herbert Fisher, Jr., Lancaster, PA, PRT–032816

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the, M'Clintock Channel polar bear population, Canada, for personal use. On September 19, 2000 (65 FR 56588), the permit request was mistakenly published as a sport-hunted bear from the Lancaster Sound population.

Applicant: Nathan P. Newbern, Ft. Worth, TX, PRT–035772

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Canada, for personal use.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 1, 2000.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 00–31222 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On September 21, 2000, a notice was published in the **Federal Register**, Vol. 64, No. 184, Page 57205, that an application had been filed with the Fish and Wildlife Service by Larry Martin for a permit (PRT–032405) to import one polar bear (*Ursus maritimus*) trophy taken from the M'Clintock Channel population, Canada for personal use.

Notice is hereby given that on November 14, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On October 4, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 193, Page 59197, that an application had been filed with the Fish and Wildlife Service by Chicago Zoological Society, Brookfield, IL, for a permit (PRT–032510) to import one captive born polar bear (*Ursus maritimus*) from the Jardin Zoo, Quebec, Canada for the purposes of public display and conservation education.

Notice is hereby given that on November 24, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Rm. 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: December 1, 2000.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 00–31223 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Great Lakes Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces meeting of the Aquatic Nuisance Species (ANS) Task Force Great Lakes Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Great Lakes Panel will meet from 1 pm to 5 pm on Tuesday, December 12, 2000, and 8 am to 12 noon on Wednesday, December 3, 2000.

ADDRESSES: The Great Lakes Panel meeting will be held at the Holiday Inn, North Campus, 3600 Plymouth Road, Ann Arbor, Michigan, 48105.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Shwayder, Project Manager, Great Lakes Commission, at 734–665–9135 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon_gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Great Lakes Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Great Lakes Panel, comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests, provides the following:

(a) Identify priorities for the Great Lakes Region with respect to aquatic nuisance species;

(b) Make recommendations to the Task Force regarding programs to carry out zebra mussel programs;

(c) Assist the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes region;

(d) Coordinate, where possible, aquatic nuisance species program activities in the Great Lakes region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance

Prevention and Control Act of 1990 (as amended, 1996);

(e) Provide advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

(f) Submit an annual report describing activities within the Great Lakes region related to aquatic nuisance species prevention, research, and control.

The focus of this meeting will be to: Review panel activities for the past year, hear updates of ongoing activities, and review the Great Lakes Action Plan.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: December 1, 2000.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 00–31119 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petitions for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) notice is hereby given that the following groups have each filed a letter of intent to petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. Each letter of intent was received by the Bureau of Indian Affairs (BIA) on the date indicated, and was signed by members of the group's governing body.

Ozark Mountain Cherokee Tribe of Arkansas and Missouri, *c/o* Mr. Terry D. Smith, P.O. Box 271, Melbourne, Arkansas 72556. October 19, 1999.

Creek-Euchee Band of Indians of Florida, *c/o* Chris Sewell, P.O. Box 157, Bristol, Florida 32321. November 23, 1999.

Ooragnak-Indian Nation, *c/o* Mr. William Blake, 8181 Deadstream Road, Honor, Michigan 44640. December 1, 1999.

Saponi Nation of Missouri, *c/o* Mr. John Trullinger, 3445, CR 4990, Willow Springs, Missouri 65793–9728. December 14, 1999.

Maconce Village Band of Ojibwa, *c/o* Mr. Ernest I. Young, 6300 Church Road, Ira Township, Michigan 48023. March 7, 2000.

Traditional Choinumni Tribe, *c/o* Ms. Angie Osborne, 2787 North Piedra Road, Sanger, California 93657. March 29, 2000.

Federation of Old Plimoth Indian Tribes, Inc., *c/o* Rodney Joseph, 558 Wareham Road, Plymouth, Massachusetts 02360. May 16, 2000.

Honey Lake Maidu, *c/o* Ronnie Morales, 1101 Arnold Street, Susanville, California 96130. June 1, 2000.

United Cherokee Indian Tribe of Virginia, *c/o* Samuel H. Penn, Sr., P.O. Box 1104, Madison Heights, Virginia 24572. July 31, 2000.

Cherokee River Indian Community, *c/o* Steven Bison, 11271 County Road 7, Moulton, Alabama 35650. August 3, 2000.

Wicocomico Indian Nation, *c/o* Al Byrd, 2054 Newmans Neck Road, Heathsville, Virginia 22473. August 28, 2000.

Cherokee's of Lawrence County, Tennessee, *c/o* Joe Harlan White, 393 Rabbit Trail Road, Leoma, Tennessee 38468. September 14, 2000.

Wiquapaug Eastern Pequot Tribe, *c/o* Byron O. Brown, P.O. Box 1148, Hope Valley, Rhode Island 02832. September 15, 2000.

North Valley Yokut Tribe, *c/o* Katherine Perez, 1234 Luna Lane, Stockton, California 95206. September 22, 2000.

Tejon Indian Tribe, *c/o* Dick Montes, 2234 Fourth Street, Wasco, California 93280. October 27, 2000.

This is a notice of receipt of these letters of intent to petition and does not constitute notice that the petitions are under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under section 83.9(a) of the Federal regulations, third parties may submit factual and/or legal arguments in support of or in opposition to each group's petition and may request to be kept informed of all general actions affecting the petition. Third parties should provide copies of their submissions to the petitioner. Any information submitted will be made available on the same basis as other information in the BIA's files. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petitions may be examined, by appointment, in the Department of the Interior, BIA, Branch of Acknowledgment and Research, MS: 4660–MIB, 1849 C Street, N.W., Washington, D.C. 20240; Telephone: (202) 208–3592.

Dated: November 21, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31147 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1430–ET; NMNM 25016–30]

Public Land Order No. 7470; Partial Revocation of Executive Order Dated April 17, 1926; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 39.91 acres of land withdrawn for the Bureau of Land Management's Public Water Reserve No. 107. The land does not meet the criteria for a public water reserve. This action will open the land to surface entry and nonmetalliferous mining. The Executive order did not close any of the land to metalliferous mining or to mineral leasing.

EFFECTIVE DATE: January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 20 S., R. 28 E.,
Sec. 1, lot 1.
The area described contains 39.91 acres in Eddy County.

2. At 10 a.m. on January 8, 2001, the land described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of

applicable law. All valid applications received at or prior to 10 a.m. on January 8, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on January 8, 2001, the land described in paragraph 1 will be opened to nonmetalliferous mineral location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land for nonmetalliferous minerals under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 14, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–31183 Filed 12–6–00; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–862 (Final)]

Certain Expandable Polystyrene Resins From Korea

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On November 16, 2000, the Department of Commerce published notice in the **Federal Register** of a negative final determination of sales at less than fair value in connection with the subject investigation (65 FR 69284). Accordingly, pursuant to § 207.40(a) of the Commission's rules of practice and procedure (19 CFR 207.40(a)), the antidumping investigation concerning certain expandable polystyrene resins from Korea (Investigation No. 731–TA–862 (Final)) is terminated.

EFFECTIVE DATE: November 16, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: December 1, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–31178 Filed 12–06–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities, Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Extension of currently approved information collection; Complaint Form, Coordination and Review Section, Civil Rights Division, Department of Justice.

The Department of Justice, Civil Rights Division has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 11, 2000, page 54861–54862, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until January 8, 2001. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Office, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of Currently Approved Collection.

(2) Title of the Form/Collection: Complaint Form, Coordination and Review Section, Civil Rights Division, Department of Justice.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No form number. Coordination and Review Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Individuals or Households.

The information collection is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral is necessary, and to provide information needed to initiate investigation of the complaint. Respondents are individuals alleging discrimination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1560 responses per year; ½ hour per response. The information will be submitted by the respondent only once. Thus, there will be approximately

1560 total yearly responses at ½ hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 780 annual burden hours.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: November 30, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–31177 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: Notice of Information Collection Under Review; Extension of a currently approved collection; Application for registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); and Affidavit for Chain Renewal (DEA Form 224B).

The Department of Justice, Drug Enforcement Administration has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 5, 2001.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact James A. Pacella, 202–307–7250, Registration and Program Support Section, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20537.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

1. *Type of information collection:* Extension of a currently approved collection.

2. *The title of the form/collection:* Application for Registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); and Affidavit for Chain Renewal (DEA Form 224B).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: DEA Form 224, DEA Form 224a and DEA Form 224B. Applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households, Not-for-profit institutions and State, Local or Tribal Government. Abstract: All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Registration is needed for control measures over legal handlers of controlled substances and is used to monitor their activities. A revision made to the subject forms requires the respondent to submit their Tax Identification Number or Social Security Number as required by the Debt Collection Improvement Act of 1996 (PL 104–134).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Regarding DEA Form 224 and DEA Form 224a: 374,701 respondents, .20 hours per response. A respondent will take an estimate of 12 minutes per year to complete a DEA Form 224 or DEA 224a. Regarding DEA Form 224B: 12 respondents, 5 hours per response. A respondent will take an estimate of 5 hours per year to complete a DEA Form 224B.

6. *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Ave., NW., Washington, DC 20530.

Dated: November 30, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–31117 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: Notice of Information Collection Under Review; Extension of a currently approved collection; Application for registration (DEA Form 225); Application for Registration Renewal (DEA Form 225a); and Affidavit for Chain Renewal (DEA Form 225B).

The Department of Justice, Drug Enforcement Administration has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 5, 2001.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. James A. Pacella, 202–307–7250, Registration and Program Support Section, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including the validity of the methodology and assumptions used;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

1. *Type of information collection:* Extension of a currently approved collection.

2. *The title of the form/collection:* Application for Registration (DEA Form 225); Application for Registration Renewal (DEA Form 225a); and Affidavit for Chain Renewal (DEA Form 225B).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Numbers: DEA Form 225, DEA Form 225a and DEA Form 225B. Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other-for-profit. Other: Individuals or households, Not-for-profit institutions and State, Local or Tribal Government. Abstract: The Controlled Substances Act requires all firms and individuals who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain. A revision made to the subject forms requires the respondent to submit their Tax Identification Number or Social Security Number as required by the Debt Collection Improvement Act of 1996 (PL 104–134).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Regarding DEA Form 225 and 225a: 9,800 respondents, .5 hours per response. A respondent will take an estimate of 30 minutes to complete a DEA Form 225 or DEA Form 225a. Regarding DEA Form 225B: 7 respondents, 1 hour per response. A respondent will take an estimate of 1 hour each year to complete a DEA Form 225B.

6. *An estimate of the total public burden (in hours) associated with the collection:* 4,907 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: November 30, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–31118 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection Comment Request

ACTION: Notice of Information Collection Under Review; Revision of a currently approved collection; Local Law Enforcement Block Grants Program Request for Drawdown.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 8, 2000, page 54562 allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until January 8, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Local Law Enforcement Block Grants Program Request for Drawdown.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: None

The Local Law Enforcement Block Grants Act of 1996 authorizes the Director of the Bureau of Justice Assistance to make funds available to local units of government in order to reduce crime and improve public safety.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500

respondents will request the one-lump sum drawdown of their annual LLEBG grant funds by completing the no more than sixty minutes on-line process.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the application is 3,500.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: November 30, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–31176 Filed 12–6–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–052F]

Occupational Exposure to Cotton Dust: Notice of the Availability of a Lookback Review Pursuant to the Regulatory Flexibility Act and Executive Order 12866

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

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has completed a lookback review of its Cotton Dust Standard, 29 CFR 1910.1043, pursuant to Sec. 610 of the Regulatory Flexibility Act and Sec. 5 of Executive Order 12866. That review, ''Regulatory Review of OSHA's Cotton Dust Standard, September 2000,'' indicates: that the standard has reduced byssinosis rates from 12% to 1%; that the standard cost one-quarter to one-half of various estimates and increased productivity; that the standard does not impose a significant impact on small business; and that public commenters agree that the standard should remain in effect. Based on this review, OSHA concludes that the Cotton Dust Standard should be continued without change except that the washed cotton partial exemption to the standard should be expanded based on new studies and recommendations from industry, unions and government experts. See the Final Rules section of today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joanna Dizikes Friedrich, Directorate of Policy Rm. N3641, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1939. Direct technical inquiries about the Cotton Dust Standard to Gail Brinkerhoff, Rm. N3603, telephone (202) 693–2190, or visit the OSHA Homepage at *www.OSHA.dol.gov.* Direct press inquiries to Bonnie Friedman, Director of Information and Consumer Affairs, Rm. N–3647, telephone (202) 693–1999.

ADDRESSES: Copies of the entire report may be obtained from the OSHA Publication Office, Rm. N–3101, 200 Constitution Avenue, NW., Washington, DC 20210, tel. (202) 693–1888, Fax (202) 693–2498. The full report, comments, and referenced documents are available for review at the OSHA Docket Office, Docket No. H–052F, Rm. 2625, 200 Constitution Ave., NW. Washington, DC 20210, tel. (202) 693–2119. The main text of the report will become available on the OSHA web page at *www.OSHA.dol.gov.*

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Administration (OSHA) issued its final Cotton Dust Standard June 23, 1978 (43 FR 27351) and amended it December 12, 1985 (50 FR 51120). That standard is codified at 29 CFR 1910.1043.

OSHA has completed a ''Lookback'' review of the Cotton Dust Standard titled, ''Regulatory Review of OSHA's Cotton Dust Standard, September 2000.'' This **Federal Register** notice announces the availability of that review and briefly summarizes it.

The purpose of the Cotton Dust Standard is to greatly reduce the significant risk of byssinosis (brown lung disease), a disabling lung disease. Prior to the standard more than 50,000 cotton textile workers suffered from the disease at any one time.

The Cotton Dust Standard sets maximum permissible exposure limits (PELs) for cotton dust which vary by operation. It includes requirements for monitoring, medical surveillance, work practices and other requirements. It includes partial exemptions for the processing of cotton washed according to various protocols which greatly reduce the cotton's biological reactivity. Certain sections of the industry, such as knitting, are partially or completely exempt from the standard because those sections do not present significant risk of byssinosis.

In 1998, the Occupational Safety and Health Administration (OSHA) began a review of its Cotton Dust Standard under Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601, 610) and Section 5 of Executive Order (EO) 12866 on Regulatory Planning and Review.

The purpose of a review under Section 610 of the Regulatory Flexibility Act (RFA):

> ''(S)hall be to determine whether such rule should be continued without change, or should be rescinded, or amended consistent with the stated objectives of applicable statutes to minimize any significant impact of the rules on a substantial number of small entities.''
>
> ''The Agency shall consider the following factors:
>
> (1) The continued need for the rule;
>
> (2) The nature of complaints or comments received concerning the rule from the public;
>
> (3) The complexity of the rule;
>
> (4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
>
> (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.''

The review requirements of Section 5 of EO 12866 require agencies:

> To reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the [Agency] have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations.

To carry out these reviews, on June 23, 1998, OSHA asked the public for comments on all issues raised by these provisions (63 FR 34140). Among other things, OSHA requested comments on: the benefits and utility of the rule in its current form; the continued need for the rule; the complexity of the rule; and whether, and to what extent, the rule overlaps, duplicates, or conflicts with other Federal, State, and local government rules. OSHA also asked for comments on new developments in technology, economic conditions, or other factors affecting the ability of covered firms to comply with the Cotton Dust Standard and on alternatives to the rule that would minimize significant impacts on small businesses while achieving the objectives of the Occupational Safety and Health Act.

OSHA accepted written comments from June 23, 1998 through August 31, 1998. OSHA also conducted two public meetings, on July 24 and July 30, 1998,

in Atlanta, Georgia, and Washington, DC, respectively. Comments were received from employers, trade associations, the National Institute for Occupational Safety and Health, U.S. Department of Agriculture, the joint industry/government/union Task Force for Byssinosis Prevention, trade unions and textile workers. OSHA also considered the many published studies and reports on relevant issues. All documents, studies and comments received relevant to the review, transcripts of the oral hearings and documents discussed in this report are available at the OSHA Docket Office, Docket No. H–052F, Room N–3625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–2350.

Conclusions: Based on the comments and testimony of participants in this lookback review process and the studies and other evidence submitted to the public docket, OSHA concludes as discussed in depth in ''Regulatory Review of OSHA's Cotton Dust Standard, Sept. 2000,'' that the Agency's standard should be continued without change (except for an expansion of the washed cotton exemption discussed below). The evidence also demonstrates that the standard does not need to be rescinded or amended to minimize significant impacts on a substantial number of small entities.

OSHA also finds that the Cotton Dust standard is necessary to protect employee health, is compatible with other OSHA standards, is not duplicative or in conflict with other Federal, State, or local government rules, is not inappropriately burdensome, and is consistent with the President's priorities and the principles of EO 12866. Further, no changes have occurred in technological, economic, or other factors that would warrant revision of the standard at this time.

The major impact of the Cotton Dust Standard is on firms in the cotton-using 4 digit SIC sectors of the textile industry. These are firms which open and process raw cotton, spin that cotton into cotton and cotton blend yarn and thread, and turn that yarn and thread into cotton and cotton blend fabrics. (The report also discusses other sectors and operations where the standard has some impact.)

It is estimated that there are approximately 466 cotton using establishments in these textile sectors. It also can be estimated that between 70,000 and 105,000 employees work in these establishments.

It is estimated that the prevalence rate of byssinosis among cotton textile workers was approximately 20% in the early 1970's. The completion of studies confirming these rates and OSHA's announcement of regulatory activities led some firms to lower exposures leading to an estimated prevalence rate of 12% just before OSHA issued the Cotton Dust Standard in 1978.

The provisions of the Cotton Dust Standard, lowering workers' exposure to cotton dust and requiring medical surveillance, transfer to lower exposure areas, work practices, etc., helped reduce the byssinosis prevalence rate to approximately 0.68%. The number of workers with byssinosis has been reduced to approximately 700 from approximately 12,000 in 1978 and 50,000 in 1970 (when the number of exposed workers was higher). The cotton dust standard has been highly successful in protecting the health of cotton textile workers from byssinosis and achieving the stated objective of the OSH Act.

OSHA had estimated that the capital cost of the Cotton Dust Standard would be $550 million in 1977 dollars, which was the low end of varying estimates. The actual cost was $243 million in 1982 dollars or $153 million in 1977 dollars.

The reason for the lower costs was that the standard encouraged industry to invest in more productive equipment to come into compliance. Industry purchased such things as automated opening equipment and air-jet looms to come into compliance rather than utilizing add-on ventilation.

A further result was that the Cotton Dust Standard contributed to increasing industry productivity growth, which was 2.5% per year in the 1972–79 period and increased to 3.5% per year in the 1979–1991 period. It is clear that the technological changes since the standard was issued have been positive for the industry and the standard has encouraged those positive technological developments.

It is also clear that the rule did not have any significant negative economic impact on a substantial number of small businesses. The large majority of firms affected are small businesses as defined by the Small Business Administration (SBA). Sales in the major cotton-using SICs increased from $20 billion in 1982, to $27 billion in 1992 to $38 billion in 1996 to $40 billion in 1998. Sales of small businesses as defined by the SBA in those SICs increased from $34 billion in 1996 to $36.5 billion in 1998. Sales of the smallest firms in that period increased from $6 billion to $10 billion.

Further evidence of the health of the small business sector is the entry of new small businesses into the cotton using SICs. The number of *establishments* with 1–19 employees increased 21% from 1977 to 1992, and the number of *firms* with 1–19 employees increased 55% from 1990 to 1996. (Different statistical series were available for the different periods.)

There is a continuing need for the Cotton Dust Standard. Without the exposure limits, medical surveillance, and other requirements of the standard, byssinosis prevalence rates would increase. All commenters supported the retention of the Cotton Dust Standard, and there were no criticisms that it was too complex. The stakeholders understand the standard, and its more technical requirements are necessary for effective medical surveillance and accurate monitoring.

The Cotton Dust Standard does not conflict with other Federal or state rules. Most of the cotton textile industry is located in states with their own state OSHA's. Those states have adopted cotton dust standards which are virtually identical to the Federal standard (they must adopt standards that are at least as effective as the Federal standard), and those states enforce their state standards.

Some commenters recommended minor technical changes to the Cotton Dust Standard. Those are discussed and OSHA conclusions stated in chapter VI. 5 of the full review. OSHA concluded that some of the suggestions, such as technical changes to the medical protocol, were for provisions that are working effectively and it was not worth regulatory resources to propose minor changes. Some of the other recommended minor changes, such as on monitoring frequency, were quite controversial with many opposing such changes. Consequently OSHA concluded it was not appropriate to propose such changes absent meaningful new evidence which was not presented.

The ''Reg Flex'' and Executive Order reviews did bring convincingly to OSHA's attention one change to the Cotton Dust Standard that appears strongly justified. Consequently OSHA is issuing that change by direct final rule in today's **Federal Register**.

Washing cotton according to certain protocols reduces the bioactivity of that cotton and its ability to cause byssinosis. Not all washing processes reduce the bioactivity, and cotton washed by certain processes can not be spun and woven into quality textiles. The 1985 amendments to the Cotton Dust Standard give a partial exemption for processing cotton washed according to certain protocols based on studies showing such cotton has greatly reduced bioactivity.

The industry/government/union Task Force for Byssinosis Prevention sponsors research to develop washing techniques which reduce bioactivity and create processable cotton. That Task Force has recommended that OSHA add an additional washing process, batch kier processing, to those that receive partial exemption, because batch kier processing, according to a specified protocol, greatly reduces bioactivity. That recommendation is supported by studies and recommendations of the National Institute for Occupational Safety and Health, the U.S. Department of Agriculture, industry groups and unions. Consequently, OSHA is taking prompt action to implement that recommendation and increase the flexibility available to the cotton textile industry while protecting textile worker health.

Signed at Washington, DC, this 18th day of October, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–31188 Filed 12–6–00; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 4, 2000.

TIME AND DATE: 2 p.m., Tuesday, December 12, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Northern Illinois Steel Supply Co., Docket No. LAKE 99–78–RM, etc. (Issues include whether Northern Illinois Steel Supply Company is an ''operator'' under section 3(d) of the Mine Act).

TIME AND DATE: The Commission meeting will commence following upon the conclusion of the Commission meeting to consider Northern Illinois Steel Supply Co., Docket No. LAKE 99–78–RM, etc., which commences at 2 p.m. on Tuesday, December 12, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 55b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a majority vote of the Commission that the Commission considered and act upon the following in closed session:

1. Disciplinary Proceeding, Docket No. D 2000–1.

TIME AND DATE: 10 a.m., Wednesday, December 13, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider its general procedures for handling requests to vacate defaults and requests to reopen matters that have become final Commission orders under section 105(a) of the Mine Act.

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR §§ 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–31354 Filed 12–5–00; 3:57 pm]

BILLING CODE 6735–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 11 a.m., local time on Wednesday, December 13–15, 2000, in the Safety Board's Boardroom and Conference Center at 429 L'Enfant Plaza SW, Washington, DC 20594 concerning Alaska Airlines Flight 261 off the coast of California near Port Hueneme on January 31, 2000. For more information, contact Dick Rodriquez, NTSB Office of Aviation Safety at (202) 314–6317 or Terry N. Williams NTSB Office of Public Affairs at (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Carolyn Dargan on 202–314–6305 by Friday December 8, 2000.

Dated: December 4, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–31169 Filed 12–6–00; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity to Comment on the Proposed Information Collection Initiative

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has prepared a proposed initiative for the *voluntary* submittal of information by external stakeholders about the impact that licensing actions and other regulatory activities have on maintaining safety and reducing unnecessary regulatory burden for commercial nuclear power plants. The purpose of this initiative is to obtain information to assist the Office of Nuclear Reactor Regulation (NRR) staff in (1) allocating staff resources and (2) measuring how the work NRR staff completes contributes to the agency goals of maintaining safety and reducing unnecessary regulatory burden. The staff is requesting comments on this proposed information collection initiative.

DATES: The comment period expires January 22, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted in person or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, U.S. NRC, Mail Stop T6–D59, Washington, DC 20555–0001.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Pat Madden, Mail Stop O8E6, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2854, email *pmm@nrc.gov.*

SUPPLEMENTARY INFORMATION: As applicants submit requests for regulatory deliverables (*e.g.,* license amendment approvals, topical report reviews, rulemaking petitions), they would voluntarily provide information

about the impact their request would have on maintaining safety and reducing unnecessary regulatory burden. Ideally, measures for safety impact would include changes in person-rem dose or changes in core damage frequency (CDF). Similarly, measures for regulatory burden reduction would include changes in licensee costs or power production capability. However, the staff recognizes that it may not be possible or practical to provide actual risk metrics or dollar savings, and that more qualitative measurements may be more realistic. The staff invites comments from our external stakeholders to ensure that the measures are uniform, practical, and meaningful, and provide the appropriate yardstick for measuring the impact that a proposed activity has on safety and regulatory burden. This information would be collected for many types of external stakeholder submittals including license amendments, topical reports, rulemaking petitions, and license renewal applications. The staff encourages suggestions on what other submittals such information should be collected for in response to this initiative. Recognizing that there are many factors that could inhibit licensees and other stakeholders from providing such information, we invite comments to obtain an understanding of what the factors are and how they may be overcome.

The information described above would assist NRR in (1) allocating staff resources and (2) measuring how the work NRR staff completes contributes to the agency goals of maintaining safety and reducing unnecessary regulatory burden. The staff is requesting comments on this proposed information collection initiative.

With respect to the first purpose, allocating staff resources, NRR would use the information collected to improve its effectiveness by pursuing those regulatory activities that maintain safety (or involve acceptable reductions in margin) but provide the highest return in reducing unnecessary regulatory burden. NRR is establishing a ''work planning center'' to centralize the planning and scheduling of NRR work activities, including the prioritization of specific work items. The priority factors include consideration of public health and safety, operational significance, statutory significance, and stakeholder standing and merit. Also factored into the work prioritization process is the required responsiveness (*e.g.,* normal, increased, or immediate). The information collected through this initiative would become part of the input for this work planning and scheduling.

This use of information provided by licensees in order to prioritize agency work is similar to a regulatory approach employed by the agency and licensees in the early 1990's for cost beneficial licensing actions (CBLAs). In this approach, licensees identified for the agency those licensing actions that had high economic benefits, minimal impact on safety, and required minimal agency review time. Such actions were termed CBLAs, and the agency afforded these actions higher priority treatment. One difference between this proposed information collection initiative and the CBLA approach is that the latter was limited in its scope to licensing actions meeting the above criteria. A second, more important distinction between the two is that this proposed initiative has another purpose, which we describe in the following paragraph.

With respect to the second purpose, measuring how the work NRR staff completes contributes to the agency goals of maintaining safety and reducing unnecessary regulatory burden, the information collected would support the agency's efforts toward becoming a performance-based organization. This is consistent with the enactment of the Government Performance and Results Act (GPRA). The agency has established a framework for implementing the performance-based approach called the Planning, Budgeting, and Performance Management (PBPM) process. This PBPM process consists of setting the strategic direction, budgeting resources, and measuring and assessing performance. The agency reports the measures and assessment of performance in yearly reports to the President and the Congress. The information collected as described in this initiative would be used in these yearly reports to demonstrate to stakeholders that safety is being maintained even as the staff allows for unnecessary burden reduction. The staff would also use the information collected to demonstrate to stakeholders what the staff has accomplished with the resources that we have been given. This type of information would allow the staff to better align its outputs (*e.g.,* license amendments) to NRR performance goals (*e.g.,* maintain safety). By compiling this type of information over the fiscal year, instead of simply stating that the NRR staff completed 1500 licensing actions per year (outputs), the staff can also quantify such performance measures as direct cost savings to licensees, person-rem savings, and reduced shutdown risk that resulted from approval of those licensing actions (outcomes).

The success of this voluntary initiative is dependent on industry's willingness to provide the information. The staff realizes that there may be concerns with how we will use the information collected to prioritize work within NRR. The staff invites comments and suggestions such that we may directly address such concerns. We also recognize that this information collection initiative should be as simple as possible while still providing meaningful information. We encourage comments on how to most simply characterize the safety and regulatory burden impact such that this information collection initiative does not become time-consuming or resource-intensive.

After receiving formal comments in response to this **Federal Register** notice, the staff plans to hold a public meeting to develop a consensus as to the type of voluntary information that could be used to measure impact on safety and reduction in unnecessary regulatory burden. This meeting is currently planned for February 2001. Finally, if reasonable and acceptable metrics can be developed and made available to all stakeholders, the staff expects to begin using voluntary information submitted under this initiative after October 1, 2001.

Dated at Rockville, Maryland, this 1st day of December, 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing and Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31155 Filed 12–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

In the Matter of Mr. William Kimbley Mrs. Joan Kimbley; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. William Kimbley and Mrs. Joan Kimbley were previously officers of Midwest Testing, Inc., an entity that was a holder of NRC License No. 13–24866–02 issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 30. The license authorized the possession and use cesium-137 and americium-241 as sealed sources in moisture density gauges. The license was issued on August 19, 1992, and was terminated on June 12, 1995.

On June 12, 1995, a Confirmatory Order was issued prohibiting Mr. William Kimbley and Mrs. Joan Kimbley from engaging in licensed activities for five years from June 2, 1995. The Order was issued due to deliberate violations of NRC requirements involving: The failure to provide personnel monitoring devices to individuals using licensed material; the failure to perform leak tests of nuclear moisture density gauges; the storage of licensed material at an unauthorized location; the failure to request a license amendment to name a new Radiation Protection Officer; and, the use of nuclear moisture density gauges with an expired license.

II

In 1998, the NRC, during a review of retired license files, identified that NRC License No. 13–24866–01, issued to Midwest Testing, Inc., contained inadequate documentation regarding the disposition of three nuclear moisture density gauges. License No. 13–24866–01 was superseded with License No. 13–24866–02. License No. 13–24866–02 was terminated on June 12, 1995.

A review of records indicated that during a November 18, 1994, telephone conversation with NRC staff, Mr. William Kimbley stated that two of his gauges were gone, sold to other authorized users. However, on November 23, 1994, Mr. Kimbley stated that he was unable to sell the gauges but would transfer the gauges to an authorized user. On December 14, 1998, NRC staff contacted Mr. William Kimbley to determine the final disposition of the nuclear gauges. During this telephone conversation, Mr. William Kimbley stated that Midwest Testing, Inc. was no longer in business and that one gauge was at a repair shop and the other two gauges were in California being refurbished. A subsequent NRC review of the license files identified the companies that received the gauges. The first company stated that they received one gauge, which was held by them for nonpayment of repair service fees and subsequently was sold to another company licensed to possess nuclear moisture density gauges. A second company stated that they received the other two gauges for storage on December 1, 1994, and returned the gauges to Mr. William Kimbley on January 15, 1997. It was then determined that a third company received these two gauges from Mr. William Kimbley for refurbishment on May 14, 1997, and returned both gauges to Mr. Kimbley on June 16, 1997. Due to the uncertainty of the whereabouts of these two gauges, a special inspection was conducted January 5, 1999.

During this special inspection, Mr. William Kimbley stated that he did not have the gauges. After additional discussion with Mr. William Kimbley, the NRC found the two nuclear moisture density gauges at the residence of Mr. William Kimbley and Mrs. Joan Kimbley. It was verified by the NRC on January 8, 1999, that these two gauges were transferred to a licensee authorized to possess the gauges. NRC concluded that Mr. William Kimbley and Mrs. Joan Kimbley apparently had possessed these gauges from January 15, 1997, to May 14, 1997, and from June 16, 1997 to January 7, 1999, without a valid license and contrary to the June 12, 1995, Confirmatory Order.

The NRC Office of Investigations initiated an investigation on January 5, 1999, to determine whether Mr. William Kimbley and Mrs. Joan Kimbley deliberately possessed licensed material in violation of NRC requirements and the June 12, 1995, Confirmatory Order. The investigation also reviewed whether Mr. William Kimbley made false statements to NRC staff. As a result of the investigation, it was determined that Mr. William Kimbley and Mrs. Joan Kimbley deliberately possessed licensed material in violation of NRC requirements and the June 12, 1995, Confirmatory Order. In addition, the investigation determined that Mr. William Kimbley deliberately provided inaccurate information to NRC staff on November 18, 1994, December 14, 1998, and January 5, 1999, when he denied he had possession of the nuclear moisture density gauges.

A predecisional enforcement conference was conducted with Mr. William Kimbley on September 8, 2000, to discuss the possession of nuclear moisture density gauges in apparent deliberate violation of NRC requirements and the June 12, 1995, Confirmatory Order. Mr. William Kimbley stated the gauges had been stored at a licensed facility and were subsequently shipped to the gauge manufacturer for refurbishment. Mr. William Kimbley stated that the manufacturer returned the gauges to him without informing him that they were being returned. Mr. Kimbley stated he had difficulty selling the gauges due to their age and subsequently moved them to his home where they were found by the NRC. Mr. Kimbley stated he knew the gauges were required to be stored in a licensed facility and had tried to keep them there. Mr. Kimbley also stated that he did not consider whether possessing the gauges violated the June 12, 1995, Confirmatory Order.

III

Based on the above, it appears that Mr. William Kimbley and Mrs. Joan Kimbley deliberately violated Section 81 of the Atomic Energy Act of 1954, as amended (Act); 10 CFR 30.3; and the June 12, 1995, Confirmatory Order. Section 81 of the Act and 10 CFR 30.3 require, in part, that no person possess byproduct material except as authorized in a general or specific license. Specifically, the NRC has concluded that Mr. William Kimbley and Mrs. Joan Kimbley deliberately violated NRC requirements and the June 12, 1995, Confirmatory Order since they knowingly possessed two nuclear moisture density gauges containing byproduct material without an NRC license between January 15, 1997, and May 14, 1997, and between June 16, 1997 and January 7, 1999. In addition, it appears that Mr. William Kimbley deliberately violated 10 CFR 30.10. 10 CFR 30.10 requires, in part, that a person may not deliberately submit to NRC information that the person knows to be incomplete or inaccurate. Mr. William Kimbley deliberately violated 10 CFR 30.10 on November 18, 1994, December 14, 1998, and January 5, 1999, when he denied possessing nuclear moisture density gauges. Consequently, in light of the nature of the violations, the length of time the violations existed, and the deliberate nature of the violations, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. William Kimbley and Mrs. Joan Kimbley were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. William Kimbley and Mrs. Joan Kimbley be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. William Kimbley and Mrs. Joan Kimbley are required to notify the NRC of their first employment in NRC-licensed activities for a period of five years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. William Kimbley's and Mrs. Joan Kimbley's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended,

and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.3, 10 CFR 30.10, and 10 CFR 150.20, It Is Hereby Ordered, Effective Immediately, That:

1. Mr. William Kimbley and Mrs. Joan Kimbley are prohibited for five years from the date of this Order from engaging in NRC-licensed activities and from possessing licensable byproduct materials. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. William Kimbley and Mrs. Joan Kimbley are currently involved with another licensee in NRC-licensed activities, they must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of five years after the five-year period of prohibition has expired, Mr. William Kimbley and Mrs. Joan Kimbley shall, within 20 days of their acceptance of their first employment offer involving NRC-licensed activities or their becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where they are, or will be, involved in the NRC-licensed activities. In the notification, Mr. William Kimbley and Mrs. Joan Kimbley shall include a statement of their commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that they will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. William Kimbley and Mrs. Joan Kimbley of good cause.

V

In accordance with 10 CFR 2.202, Mr. William Kimbley and Mrs. Joan Kimbley must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. William Kimbley and Mrs. Joan Kimbley or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to Mr. William Kimbley and Mrs. Joan Kimbley if the answer or hearing request is by a person other than Mr. William Kimbley or Mrs. Joan Kimbley. If a person other than Mr. William Kimbley or Mrs. Joan Kimbley requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. William Kimbley or Mrs. Joan Kimbley or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. William Kimbley and Mrs. Joan Kimbley, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An Answer or a Request for Hearing Shall Not Stay The Immediate Effectiveness of this Order.

Dated this 28th day of November, 2000.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 00–31156 Filed 12–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Nuclear Management Company, LLC; Kewaunee Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–43 issued to the Nuclear Management Company, LLC (NMC or the licensee), for operation of the Kewaunee Nuclear Power Plant (KNPP or Kewaunee), located in Kewaunee County, Wisconsin.

Environmental Assessment

Identification of the Proposed Action

The proposed action would increase the number of fuel assemblies that can be stored in the Kewaunee spent fuel pools (SFPs) from 990 fuel assemblies to 1,205 fuel assemblies, an increase of 215 fuel assemblies, by installing 215 new spent fuel storage racks in the new north canal pool. In addition, the new spent fuel storage racks will use Boral as the neutron absorber material.

The proposed action is in accordance with the licensee's application for amendment dated November 18, 1999, as supplemented by letter dated August 7, 2000.

The Need for the Proposed Action

KNPP is a pressurized water reactor (PWR) which commenced commercial operation in 1974, and its current operating license will expire in December 2013. Initially, KNPP was designed to accommodate 168 spent fuel assemblies (SFAs). The last phase of re-racking the SFP at KNPP was completed in 1987, which provided for the current storage capacity of 990 SFAs. Currently, KNPP has two storage pools. The larger south pool contains racks with a storage capacity for 720 SFAs, and the smaller north pool contains racks with a storage capacity for 270 SFAs. There are presently 718 SFAs stored in the south pool and 106 SFAs stored in the north pool. As a result of the present unavailability of an off-site spent fuel

storage facility and the current rate of fuel discharge (approximately 40 assemblies per cycle), KNPP will currently lose full-core reserve capability after the Fall 2001 outage. The addition of the 215 storage locations in the new north canal pool will extend the full-core reserve capability until after the 2009 outage, and increase the total capacity to 1205 SFAs.

The proposed action is needed to provide additional spent fuel storage capacity to extend the full-core reserve capability beyond the Fall 2001 outage.

Environmental Impacts of the Proposed Action

Radioactive Wastes

The Kewaunee Nuclear Power Plant uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) dated December 1972. The proposed SFP expansion will not involve any change in the waste treatment systems described in the FES.

Radioactive Material Released into the Atmosphere

The expanded fuel storage capacity obtained by installing new fuel racks into the transfer canal is not expected to affect the release of radioactive gases from the SFP. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases are released to the reactor coolant from the small number of fuel assemblies which are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the SFP and are subsequently released into the air of the spent fuel building. Gaseous releases from the fuel storage area are combined with other plant exhausts. If radio-iodine levels become too high, the air can be diverted to charcoal filters for the removal of radio-iodine before release to the environment. Normally, the radioactive gas contribution from the fuel storage area is negligible compared to the gaseous releases from other areas of the plant. Since the frequency of refueling (and therefore the number of freshly off loaded spent fuel assemblies stored in the SFP at any one time) will not increase, there will be no increase in the amounts of these types of fission products released to the atmosphere as a result of the increased SFP fuel storage capacity.

Tritium gases contained in the SFP are produced from two sources. The first source is the tritium from the reactor coolant system (RCS), which is a result of neutron capture in the reactor core by Boron-10. Tritium produced in this manner can only enter the spent fuel pool during refueling outages when the SFP and the RCS are interconnected. Since the proposed amendment does not increase the frequency of refueling outages, this source of tritium does not change. The second source of tritium is a result of neutron capture by Boron-10 in the SFP water. The decay neutron flux from the old fuel in the SFP is considerably smaller than the neutron flux in the core of an operating reactor. Due to the small neutron flux associated with the fuel to be stored in the new racks, the effect on tritium production will be insignificant. Therefore, the release of tritium from the storage of additional spent fuel assemblies in the transfer canal will be insignificant.

In addition, the plant radiological effluent Technical Specifications, which are not being changed by this action, restrict the total releases of gaseous activity from the plant (including the SFP).

Solid Radioactive Wastes

Independent of the proposed modification, the concentration of radionuclides in the SFP is controlled by the filters and demineralizer of the SFP purification system as well as by the decay of short-lived isotopes. Spent resins are generated by the processing of SFP water through the SFP purification system. Both spent resins and filters are disposed of as solid radioactive waste. Since the frequency of refueling outages is unchanged by the proposed action, the activity in the SFP is not expected to increase significantly above its current value. Thus, the radioactivity collected on the spent fuel resins and filters is not expected to significantly increase above its current value as a result of the storage capacity increase. The cumulative amount of radioactivity collected on the spent fuel resins over time will increase slightly with an increase in the amount of spent fuel that is added to the SFP; however, this increase is expected to be insignificant.

The licensee will use a vacuum to clean the floor of the fuel transfer canal following the drying of the canal prior to installing the new fuel racks. Vacuuming of the canal floor will remove any extraneous debris and crud. Filter bags from the vacuum will be disposed of as solid radioactive waste. Depending on the waste characterization of these filters, the licensee will dispose of them utilizing shielded canisters and high integrity containers which will then be stored onsite or shipped for burial accordingly. However, this amount of solid radioactive waste is expected to be negligible in comparison with other sources of solid radioactive wastes generated at the plant (it is expected that the total volume of low level radioactive waste generated due to this project will be less than 50 cubic feet).

Therefore, the staff does not expect that the additional fuel storage capacity made possible by the addition of fuel racks in the north portion of the Kewaunee fuel transfer canal will result in a significant change in the generation of solid radwaste at the Kewaunee Nuclear Power Plant.

Liquid Radioactive Wastes

The SFP ion exchanger resins that are part of the SFP water cleanup system remove soluble radioactive materials from the SFP water. When the resins are changed out, the small amount of resin sluice water which is released is processed by the liquid radwaste system before any water is discharged to Lake Michigan. The resin in the spent fuel pool demineralizer is typically replaced every 12 to 15 months. It is possible that fuel movement may stir up a small amount of settled contamination during loading of the fuel into the new racks. However, it is expected that this will have an insignificant effect on the frequency of resin change out. Therefore, the installation of the new fuel racks is not expected to increase the amount of liquid radioactive wastes generated at the Kewaunee Nuclear Power Plant.

In addition, the plant radiological effluent Technical Specifications, which are not being changed by this action, restrict the total releases of activity in liquids from the plant.

Radiological Impact Assessment

Radiation protection personnel will provide constant coverage, including dose monitoring, for the majority of the work. Since this license amendment does not involve the removal of any spent fuel racks, the licensee does not plan on using divers for this project. However, if it becomes necessary to utilize divers to remove any interferences which may impede the installation of the new fuel racks, the licensee will equip each diver with radiation detectors with remote, above surface, readouts which will be continuously monitored by Radiation Protection personnel. The total occupational dose to plant workers as a result of the SFP expansion operation is estimated to be between 0.7 and 1.3

person-rem. This dose estimate is lower than doses for SFP modifications performed at other plants. The upcoming SFP rack installation will follow detailed procedures prepared with full consideration of as low as reasonably achievable (ALARA) principles.

On the basis of our review of the licensee's proposal, the staff concludes that the KNPP SFP expansion can be performed in a manner that will ensure that doses to workers will be maintained as low as is reasonably achievable and within the limits of 10 CFR part 20. The estimated dose of 0.7 to 1.3 person-rem to perform the proposed SFP expansion operation is a small fraction of the annual collective dose accrued at the Kewaunee Nuclear Power Plant.

Furthermore, as stated previously, the concentration of radionuclides in the SFP is not expected to increase beyond its present value as a result of the proposed action. Therefore, doses to workers are not expected to increase above their current values. However, since additional spent fuel will be added to the SFP, cumulative doses over time may increase slightly, although this increase is expected to be insignificant with annual doses remaining below regulatory limits.

Accident Considerations

The licensee evaluated criticality safety calculations for normal conditions, criticality safety calculations for accident conditions, long-term reactivity changes, calculation of the transient decay heat load in the SFPs, calculation of the resulting maximum SFPs bulk temperature, calculation of the time-to-boil after a loss of forced cooling or makeup water capability, rack seismic/structural evaluations, rack fatigue analysis, SFP structural evaluation, bearing pad analysis, and liner integrity analysis, shallow drop event, deep drop event, and object drop event. The proposed modification increases the spent fuel storage capacity, but it does not change the frequency or probability or method for handling spent fuel assemblies.

The proposed expansion of the SFP will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and therefore will not result in an increase in the doses from a postulated fuel handling accident.

Environmental Impact Conclusions

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with this action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. To date, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping the spent fuel to the DOE repository is not considered an alternative to increased onsite fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from Kewaunee is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipping the Fuel Offsite to Another Utility, another NMC Site, or Private Fuel Storage Facility

The shipment of fuel to another utility or transferring fuel to another of the licensee's facilities would provide short-term relief from the problems at Kewaunee. The Nuclear Waste Policy Act of 1982, Subtitle B, Section 131(a)(1), however, clearly places the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The SFPs at the other reactor sites were designed with capacity to accommodate spent fuel from those particular sites. Therefore, transferring spent fuel from Kewaunee to other sites would create storage capacity problems at those locations. The shipment of spent fuel to another site or transferring it to another NMC site is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

The shipment of fuel to a private fuel storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, a private fuel storage facility is not licensed at this time. Therefore, shipping the spent fuel to a private fuel storage facility is not considered an alternative to increased onsite fuel storage capacity at this time.

Alternatives Creating Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, modular vault dry storage, and constructing a new pool. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies into a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the need for special security provisions and high cost. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Concerns for vault dry storage include security, land consumption, eventual decommissioning of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost. The alternative of constructing and licensing new spent fuel pools is not practical for Kewaunee because such an effort would

require about 10 years to complete and would be an expensive alternative.

The alternative technologies that could create additional storage capacity involve additional fuel handling with an attendant opportunity for a fuel handling accident, involve higher cumulative dose to workers affecting the fuel transfers, require additional security measures that are significantly more expensive, and would not result in a significant improvement in environmental impacts compared to the proposed reracking modifications.

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the SFPs and thus, increase the amount of time before the maximum storage capacities of the SFPs are reached. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer off-loads would be necessary. This is not an alternative for resolving the loss of full core off-load capability that will occur as a result of the Kewaunee refueling outage scheduled for the Fall 2001, because the spent fuel to be transferred to the pool for storage has almost completed its operating history in the core. In addition, operating the plant at a reduced power level would not make effective use of available resources and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The No-Action Alternative

Also, the NRC staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Kewaunee.

Agencies and Persons Contacted

In accordance with its stated policy, on October 12, 2000, the NRC staff consulted with the Wisconsin State official, S. Jenkins of the Wisconsin Public Service Commission, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 18, 1999, as supplemented by letter dated August 7, 2000, which are available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 30th day of November, 2000.

For the Nuclear Regulatory Commission,

Claudia M. Craig,

Section Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31157 Filed 12–6–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 October 25, 2000 (65 FR 63903). Individual authorities established or revoked under Schedule C between October 1, 2000, and October 31, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

The following Schedule C authorities were established during October 2000:

Department of Agriculture

Confidential Assistant to the Director, Office of Communications. Effective October 23, 2000.

Special Assistant to the Administrator, Foreign Agriculture Service. Effective October 23, 2000.

Department of Commerce

Director of Advance to the Deputy Chief of Staff for External Affairs. Effective October 4, 2000.

Confidential Assistant to the Deputy Chief of Staff for External Affairs. Effective October 4, 2000.

Policy Advisor for International and Economic Affairs to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 11, 2000.

Department of Defense

Defense Fellow to the Special Assistant for White House Liaison. Effective October 13, 2000.

Department of Education

Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs, Constituent Relations and Corporate Liaison. Effective October 4, 2000.

Confidential Assistant to the Deputy Assistant Secretary, Regional Services, Office of Intergovernmental and Interagency Affairs. Effective October 4, 2000.

Special Assistant to the Counselor to the Secretary. Effective October 23, 2000.

Department of Energy

Special Assistant to the Chief Financial Officer. Effective October 11, 2000.

Special Assistant to the Director, Office of Scheduling and Advance. Effective October 26, 2000.

Special Assistant to the Director, Secretary of Energy Advisory Board. Effective October 27, 2000.

Department of Health and Human Services

Confidential Assistant to the Executive Secretary to the Department of Health and Human Services. Effective October 27, 2000.

Department of Housing and Urban Development

General Deputy Assistant Secretary for Housing to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective October 4, 2000.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective October 13, 2000.

Department of Justice

Assistant to the Attorney General (Director of Scheduling). Effective October 27, 2000.

Department of Labor

Advisor to the Secretary of Labor. Effective October 24, 2000.

Staff Assistant to the Director of Scheduling and Advance. Effective October 27, 2000.

Director of Scheduling and Advance to the Chief of Staff. Effective October 27, 2000.

Department of State

Staff Assistant to the Senior Advisor to the Secretary and White House Liaison. Effective October 27, 2000.

Department of Transportation

Deputy Assistant Administrator to the Assistant Administrator for Government and Industry Affairs. Effective October 4, 2000.

Office of National Drug Control Policy

Staff Assistant (Office Automation) to the Chief of Staff, Office of National Drug Control Policy. Effective October 4, 2000.

Staff Assistant (Office Automation) to the Director, Office of National Drug Control Policy. Effective October 4, 2000.

Small Business Administration

Senior Advisor to the Associate Administrator for Veteran's Business Development. Effective October 11, 2000.

Confidential Advisor to the Deputy Administrator and Director of External Affairs. Effective October 16, 2000.

Speechwriter and Special Assistant to the Associate Administrator for Communications and Public Liaison. Effective October 27, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–31148 Filed 12–6–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Social Security Administration

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a computer matching program between the OPM and the Social Security Administration (SSA) for public comment.

SUMMARY: OPM is publishing notice of its computer matching program with SSA to meet the reporting and publication requirements of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988. In this match, SSA records are used in redetermining and recomputing certain annuitants' benefits where computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and for annuitants under the Federal Employees' Retirement System (FERS) who have a CSRS component in their FERS annuity computation. The purpose of this match is to identify these beneficiaries.

DATES: This matching program will become effective in November 2000, or 40 days after the agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget (OMB), unless either the Congress or OMB objects thereto. Any public comment on this matching program must be submitted on or before January 8, 2001.

ADDRESSES: Any interested party may submit written comments to William J. Washington, Acting Assistant Director for Systems, Finance and Administration, Retirement and Insurance Service, Office of Personnel Management, 1900 E Street NW., Room 4312, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606–2115.

SUPPLEMENTARY INFORMATION: OPM and SSA have concluded an agreement to conduct a computer matching program between the two agencies. The purpose of the agreement is to establish the conditions under which SSA agrees to the disclosure of Social Security benefit and/or tax information to OPM. OPM, as specified in 5 U.S.C. 8332(j)(1), has an obligation to use post 1956 earnings data in redetermining and recomputing annuities for certain CSRS and FERS annuitants. Section 1106 of the Social Security Act (42 U.S.C. 1306) requires that SSA disclose the needed data to OPM.

Office of Personnel Management.

Janice R. Lachance,

Director.

Report of Computer Matching Agreement Between the Office of Personnel Management and the Social Security Administration

A. Participating Agencies

OPM and SSA

B. Purpose of the Matching Program

Chapters 83 and 84 of title 5, United States Code (U.S.C.), provide the basis for computing annuities under the Civil Service Retirement System and the Federal Employees' Retirement System respectively, and require release of information by SSA in order to administer post 1956 data exchanges. In this match, SSA records are used in redetermining and recomputing certain annuitants' benefits where computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and for annuitants under the Federal Employees' Retirement System (FERS) who have a CSRS component in their FERS annuity calculation. The purpose of this match is to identify these beneficiaries.

C. Authority for Conducting the Match Program

Chapters 83 and 84, title 5, United States Code, section 1106 of the Social Security Act (42 U.S.C. 1306) and the Internal Revenue Code (26 U.S.C. 6103).

D. Categories of Records and Individuals Covered by the Match

SSA will disclose information from its Master Beneficiary Record (MBR) and its Earnings Recording and Self-Employment Income System (MEF) and manually extracted post 1956 military wage information from SSA's ''1086'' microfilm file when required. SSA has published routine uses for these systems of records, last published for the MBR, 60–0090 (SSA/OSR) on January 6, 1995 at 60 FR 2144 and for the MEF, 60–0059 (SSA/OSR), on December 5, 1994 at 59 FR 62407.

OPM's records consist of annuity data from its system of records entitled OPM/Central-1, Civil Service Retirement and Insurance Records, last published in the **Federal Register** at 64 FR 54930, October 8, 1999, as amended May 3, 2000 (65 FR 25775).

E. Description of Matching Program

OPM provides a monthly electronic finder file to SSA containing data on those individuals for whom OPM requests post 1956 military service benefit information. These elements will be matched against SSA records. SSA furnishes OPM by electronic reply file benefit information on these individuals, including the amount of the SSA benefit attributable to the post 1956 military service (which constitutes the CSRS or FERS annuity reduction amount).

F. Privacy Safeguards and Security

The personal privacy of the individuals whose names are included in the tapes is protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's ''Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988''. Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe from access by unauthorized personnel during duty hours as well as nonduty hours or when not in use. Records used in this exchange and any records created by this exchange will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records.

Both OPM and SSA have the right to make onsite inspections or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

F. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Congress and OMB. OPM's report to these parties must be received at least 40 days prior to the initiation of any matching activity. If no objections are raised by either Congress or OMB, and the mandatory 30 day public notice period for comment for this **Federal Register** notice expires, with no significant receipt of adverse public comments resulting in a contrary determination, then this computer matching program becomes effective. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

[FR Doc. 00–31149 Filed 12–6–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24778; File No. 812–12194]

Advantus Series Fund, Inc., et al.

November 30, 2000.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), for exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Advantus Series Fund, Inc. (''Advantus Fund''), an open-end, management investment company, and Advantus Capital Management, Inc. (''Advantus Capital''), the investment adviser of Advantus Fund.

SUMMARY OF APPLICATION: Applicants seek an order granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of any current or future series of the Advantus Fund and of any future open-end investment companies for which Advantus Capital or any affiliated person of Advantus Capital serves as investment adviser, manager, principal underwriter, or sponsor (collectively, ''the Future Funds,'' collectively with Advantus Fund, the ''Funds'' or individually a ''Fund'') to be sold to and held by (a) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (the separate accounts, hereinafter ''Separate Accounts,'' and the life insurance companies, hereinafter ''Participating Life Insurance Companies''), and (b) qualified plans outside of the separate account context (including, without limitation, those trusts, plans, accounts, contracts or annuities described in Sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k), or 501(c)(18) of the Internal Revenue Code of 1986, as amended (the ''Code'')), and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation 1.817.5(f)(3)(iii) (''Qualified Plans'' or ''Plans''). Applicants request that the exemptive relief being requested apply to any series of shares of the Funds that may be created in the future. The only registered open-end management investment company that currently intends to rely on the requested order is Advantus Fund.

Filing Date: The application was filed on July 31, 2000, and amended and restated on November 15, 2000 and November 28, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Minnesota Life Insurance Company, c/o Donald F. Gruber, Esq., Assistant General Counsel, 400 Robert Street North, St. Paul, Minnesota 55101–2098.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. Advantus Fund is a no-load, open-end, management investment company registered under the 1940 Act. Advantus Fund is organized as a Minnesota corporation established under Minnesota law on February 21, 1985. Prior to a change in Advantus Fund's name in 1997, Advantus Fund was known as the MIMLIC Series Fund, Inc.

2. Advantus Fund is a series company, consisting of nineteen separate portfolios, each with its own investment objectives (each a ''Portfolio''). Each Portfolio issues a

separate series of Advantus Fund's common stock. The investment advisor of Advantus Fund is Advantus Capital, a Minnesota corporation. Prior to May 1, 1997, Advantus Fund obtained advisory services from MIMLIC Asset Management Company, formerly the parent company of Advantus Capital.

3. Advantus Capital commenced its business in June 1994, and provides investment advisory services to eleven other Advantus funds and various private accounts. Advantus Capital was incorporated in Minnesota in June 1994, and is a wholly owned subsidiary of Minnesota Life Insurance Company (''Minnesota Life''), a Minnesota corporation that formerly was known as The Minnesota Mutual Life Insurance Company.

4. Shares of Advantus Fund are currently offered to a number of Separate Accounts of Minnesota Life to fund benefits under variable annuity and variable life insurance contracts issued by it and the Separate Accounts. Five of those Separate accounts are registered as unit investment trusts under the 1940 Act. Shares of Advantus Fund currently are not sold directly to the public. Shares of the Funds may, in the future, be sold to other separate accounts or to other issuers of variable annuity and variable life insurance contracts. The Separate Accounts referred to above invest in shares of the relevant Portfolios in accordance with allocation instructions received from the variable annuity contract owners or variable life insurance policy owners of Minnesota Life.

5. Advantus Fund intends to offer shares of its existing Portfolios and future investment portfolios to Separate Accounts of Participating Insurance Companies (defined below), in order to serve as the investment vehicle for various types of insurance products which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, modified single premium variable life insurance policies, and flexible premium variable life insurance contracts (collectively referred to herein as ''variable contracts'').[1] Participating Insurance Companies will be those insurance companies that purchase shares of the Funds, or of any of their Portfolios or future Portfolios, for such purposes. The Funds also may offer shares of their existing Portfolios and future investment portfolios directly to Qualified Plans outside of the separate account context.

6. The Participating Insurance Companies will establish their own Separate Accounts and design their own variable contracts. Each participating Insurance Company will have the legal obligation of satisfying all requirements applicable to such insurance company under the Federal securities laws. It is anticipated that Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well. The role of each of the Funds, so far as the Federal securities law are applicable, will be limited to that of offering its Portfolio shares, as described below, to Separate Accounts of various insurance companies and to Qualified Plans, and fulfilling any conditions the Commission may impose upon granting the order requested herein.

7. The Separate Accounts of the Participating Insurance Companies will invest in shares of the Funds in accordance with allocation instructions received from the contract owners of the variable contracts (collectively, the ''contract owners''). Additional information regarding Advantus Fund is contained in its prospectus and statement of additional information, copies of which are included in Advantus Fund's registration statement under the Securities Act of 1933, as amended, and the 1940 Act (File Nos. 2–96990 and 811–4279), which is incorporated herein by reference.

8. As noted above, the Funds may also sell their shares directly to Qualified Plans. As described below, changes in the tax law have created an opportunity for a Fund to increase its asset base through the sale of its shares to such Qualified Plans.

9. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in segregated asset accounts. The Code provides that a variable contract shall not be treated as an annuity or life insurance contract for any period (and any subsequent period) for which the investments, in accordance with regulations prescribed by the Treasury Department, are not adequately diversified. The Treasury Department has issued regulations (Treas. Reg. 1.817—5) (the ''Treasury Regulations'') which establish diversification requirements for the investment portfolios underlying variable contracts. The Treasury Regulations provide that, in order to rely on certain look-through provisions of the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The Treasury Regulations, however, also contain certain exceptions to this requirement, one of which allows shares in the investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by insurance company separate accounts (Treas. Reg. 1.817–5(f)(3)(iii).

10. The promulgation of Rules 6e–2(b)(15) and 63–3(T)(b)(15) under the 1940 Act preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Applicants submit that the sale of shares of the same investment company to Separate Accounts and to Qualified Plans would not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) given the then-current tax law.

11. Applicants submit further that the relief requested in the order should not be affected by the proposed sale of shares of the Funds to Qualified Plans and, in fact, may allow for the development of larger pools of assets resulting in greater cost efficiencies. Accordingly, Applicants are requesting relief from Sections 9(a), 13(a), 15(a) and 15(b) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to, and held by, Qualified Plans as well as insurance company separate accounts.

Applicants' Legal Analysis

1. In connection with the funding of variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b). Section 9(a) provides that it is unlawful for any company to serve as an investment advisor or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2), Rules 6e–2(b)(15)(i) and (ii) provide partial exemptions from Section 9(a). Rule 6e–2(b)(15)(iii) provides a partial exemption from Sections 13(a), 15(a), and 15(b), to the extent those sections have been deemed by the Commission to require ''pass-through'' voting with

[1] Applicants state that some Separate Accounts to which the Fund may offer its shares may be exempt from registration under the 1940 Act.

respect to an underlying fund's shares. The exemptions granted to a separate account [2] by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis supplied). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a variable life insurance separate account that owns shares of a management company that also offers its shares (a) to a variable annuity separate account of any insurance company (*i.e.,* to engage in ''mixed funding''), (b) to a variable life insurance or variable annuity separate account of any unaffiliated life insurance company (*i.e.,* to engage in ''shared funding''), or (c) directly to Qualified Plans.

2. Applicants submit that the relief granted by Rule 6e–2(b)(15) is in no way affected by the sale of Fund shares in connection with mixed or shared funding or by direct sales to Qualified Plans. Applicants, therefore, are seeking an order to permit the Participating Insurance Companies to rely on the relief granted in Rule 6e–2(b)(15). Applicants submit that, if the Funds were to sell their shares only to Qualified Plans, that no exemptive relief would be necessary. None of the relief provided for in Rule 6e–2(b)(15) relates to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans. It is only because the Separate Accounts investing in the Funds are themselves investment companies which desire to rely upon Rule 6e–2 that the Applicants are seeking the order. Accordingly, an order is requested exempting variable life insurance Separate Accounts (and, to the extent necessary, any principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a), and 15(b), and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit the sale of Funds shares to (a) variable annuity Separate Accounts and variable life insurance Separate Accounts of the same life insurance company or of affiliated life insurance companies; (b) Separate Accounts of unaffiliated life insurance companies; and (c) Qualified Plans.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 13(a), 15(a), and 15(b) to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. In addition, Rule 6e–3(T)(b)(15) provides a partial exemption from Section 9(a) to the extent that such section would render a company ineligible to serve an investment advisor or principal underwriter of any registered open-end management investment company, where an officer, director, employee or affiliated person of such company is subject to a disqualification enumerated in Section 9(a), but the individual subject to such disqualification does not participate directly in the management or administration of the underlying registered management investment company. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled (premium variable life insurance) contracts or flexible (premium variable life insurance) contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis supplied). Applicants note that, therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions, but does not permit shared funding or sales to Qualified Plans.

4. Applicants submit that the relief granted by Rule 6e–3(T)(b)(15) is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, in that the relief under Rule 6e–3(T)(b)(15) is available only where shares are offered exclusively to separate accounts, Applicants believe that additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans. Applicants, therefore, are seeking the order to permit the Participating Insurance Companies to rely on the relief granted in Rule 6e–3(T)(b)(15).

5. Accordingly, Applicants are requesting the order granting flexible premium variable life insurance Separate Accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such an account) and the Applicants from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary to permit the sale of Fund shares to (a) variable annuity Separate Accounts and variable life insurance Separate Accounts of the same life insurance company or of affiliated life insurance companies; (b) Separate Accounts of affiliated life insurance companies; and (c) Qualified Plans.

6. Applicants state that, consistent with the Commission's authority under Section 6(c) of the 1940 Act to grant exemptive orders to a class or classes or persons and transactions, their application requests relief for the class consisting of insurers and Separate Accounts' investing in the Funds (and principal underwriters and depositors of such accounts). Applicants maintain that there is ample precedent, in a variety of contexts, for granting exemptive relief not only to the applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. The Applicants state that the Commission has granted class exemptions in the context of mixed and shared funding similar to the class relief requested herein where the underlying mutual fund used for funding variable contracts also would be sold to qualified pension and retirement plans.

7. Section 6(c) of the 1940 Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the 1940 Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

8. Applicants represent that they are not aware of any stated rationale for excluding Participating Insurance Companies and Separate Accounts from the exemptive relief requested herein because the Funds also may sell their shares to Qualified Plans. Applicants maintain that, if the Funds were to sell their shares only to Qualified Plans, no exemptive relief would be necessary. Applicants state that the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability

[2] Applicants state that the exemptions provided by Rule 6e–2 also are available to the investments advisor, principal underwriter, and sponsor or depositor of the separate account.

to sell its shares to such plans. Applicants note that exemptive relief is requested in this application only because the Separate Accounts investing in the Funds are themselves investment companies seeking relief under Rules 6e–2 and 6e–3(T) and do not wish to be denied such relief if the Funds sell their shares to Qualified Plans.

9. Applicants submit that the same policies and considerations that led the Commission to grant such exemptions to other applicants are present here. Moreover, for the reasons stated below, Applicants submit that the exemptions requested are appropriate and in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants, therefore, request that the Commission issue an order under Section 6(c) of the 1940 Act granting the exemptions requested.

10. Section 9(a) provides that it is unlawful for any company to serve as investment advisor or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

11. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) provide, in effect, that the fact that an individual disqualified under Section 9(a)(1) or Section 9(a)(2) is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of Section 9(a)(3), disqualify the insurance company or any of its affiliates from serving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company.

12. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) provide, in effect, that the fact that any company disqualified under Section 9(a)(1) or Section 9(a)(2) is affiliated with the insurance company would not, by virtue of Section 9(a)(3), disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

13. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e– 3(T)(b)(15) from the requirements of Section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants maintain that these 1940 Act rules recognize that it is not necessary to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants also state that these 1940 Act rules further recognize that it is also unnecessary to apply Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as funding media for variable contracts. Applicants submit that there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding. Applicants represent that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds, and that those individuals who participate in the management or administration of Advantus Fund and, it is expected, of any Future Fund, will remain the same regardless of which Separate Accounts or insurance companies use such Funds. Applicants submit that applying the monitoring requirements of Section 9(a) because of investment by Separate Accounts of other insurers would be unjustified and would not serve any regulatory purpose. Applicants also state that the increased monitoring costs would reduce the net rates of return realized by contract owners.

14. With respect to Qualified Plans, Applicants submit that the relief requested herein from Section 9(a) in no way will be affected by the proposed additional use of the shares of the Funds in connection with Qualified Plans. Applicants maintain that the insulation of the Funds from those individuals who are disqualified under 1940 Act remains in place. Applicants state that, since the Qualified Plans are not investment companies and will not be deemed to be affiliated solely by virtue of their shareholdings, no additional relief from Section 9(a), with respect to Qualified Plans, is necessary.

15. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants represent that pass-through voting privileges will be provided by Participating Insurance Companies with respect to all variable contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for variable contract owners.

16. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed.

17. Applicants furthermore state that Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment advisor, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rule 6e–2 and 6e–3(T)).

18. Applicants state that Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that, with respect to registered management investment companies whose shares are held by a separate account of an insurance company, the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such investment company's investment policies, principal underwriter, or any investment advisor (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T)).

19. Applicants note that, in the case of such a change in the investment company's investment policies, the insurance company, in order to disregard contract owner voting instructions, must make a good-faith determination that such a change either would: (a) Violate state law, or (b) result in investments that either (i) would not be consistent with the investment objectives of the separate account or (ii) would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Applicants state that voting instructions with respect to a change in an investment advisor or principal underwriter may be disregarded only if

the insurance company makes a good-faith determination that: (a) The advisor's fee would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed advisor may be expected to employ investment techniques that vary from the general techniques used by the current advisor; or (c) the proposed advisor may be expected to manage the investment company's investments in a manner that would be inconsistent with the investment company's investment objectives or in a manner that would result in investments that vary from certain standards.

20. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. Applicants believe that, in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisors, or principal underwriters. Applicants maintain that the Commission also expressly has recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Applicants note that the Commission, therefore, deemed such exemptions necessary ''to ensure the solvency of the life insurer and performance of its contractual obligation by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' [3] Applicants state that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Applicants therefore maintain that the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) undoubtedly were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

21. Applicants believe that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding. Applicants not that such mixed and shared funding does not compromise the goals of the insurance regulatory authorities or of the Commission. Applicants state that, while the Commission may have wished to reserve wide latitude with respect to the once unfamiliar variable annuity product, that product is now familiar and there appears to be no reason for the maintenance of prohibitions against mixed and shared funding arrangements. Applicants further state that, indeed, by permitting such arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and potentially increases an investment company's assets, thereby making effective portfolio management strategies that are easier to implement and promoting other economies of scale.

22. Applicants maintain that their proposal also to sell shares of the Funds to Qualified Plans will not have any impact on the relief requested in this regard. Applicants represent that shares of the Funds would be held by the trustees of Qualified Plans as mandated by Section 403(a) of ERISA. Applicants note that Section 403(a) also provides that the trustee(s) of a qualified pension or retirement plan must have exclusive authority and discretion to manage and control the plan with two exceptions: (a) when the plan expressly provides that the trustee(s) is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee is subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (b) when the authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment mangers pursuant to Section 402(c)(3) of ERISA. Applicants state that, unless one of the two exceptions stated in Section 403(a) applies, qualified pension and retirement plan trustees have the exclusive authority and responsibility for voting proxies. Applicants further state that, when a named fiduciary appoints an investment manger, the investment manager has the responsibility to vote the shares held by the plan unless the right to vote such shares is reserved to the trustees or the named fiduciary and that, in any event, there is no pass-through voting to the participants in such qualified pension and retirement plans.

23. Accordingly, since Qualified Plan participants are not entitled to pass-through voting privileges, Applicants submit that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans.

24. Applicants state that the prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. Applicants note that when Rule 6e–2 was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Applicants maintain that, at the time of the adoption of Rule 6e–2, the Commissions staff therefore contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. Applicants state that the Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners, and that there also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly-available mutual fund and to affect the investment decisions of public shareholders. Applicants maintain that, for reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (September 25, 1981) effectively deprived variable annuities funded by publicly-available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly-available mutual funds as an investment medium for variable contracts (including variable life contracts). Applicants state that Section 817(h) of the Code of 1986, in effect, requires that the investment made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' If a separate account is organized as a unit investment trust that invests in a single fund or series, then the separate account will not be diversified. Applicants note that, in this situation, however, Section 817(h) of the Code, in effect, provides that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *.'' Applicants state that, accordingly, a unit investment trust separate account that invests solely in a publicly-available mutual fund will not be adequately diversified. In addition, Applicants state that any

[3] Investment Company Act Release No. 9104 (December 30, 1975) (proposing Rule 6e–2 under the 1940 Act).

underlying mutual fund, including any fund that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Applicants conclude that, consequently, there will be no public shareholders of the Funds.

25. Applicants state that the rights of an insurance company or of a state insurance regulator to disregard the voting instructions of contract owners are not inconsistent with either mixed funding of different insurance products or shared funding by unaffiliated insurers.

26. Applicants state that the Commission's primary concern with respect to mixed and shared funding issues is that of potential conflicts of interest. Applicants submit that, as discussed below, no increased conflicts of interest would be present if the Commission grants the requested relief.

27. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants maintain that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

28. Applicants state that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Applicants note that affiliated insurers may be domiciled in different states and be subject to differing state law requirements, and that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Applicants submit that, in any event, the conditions discussed below (which, according to the Applicants, are adapted from the conditions included in Rule 6e–3(T)(b)(15) and are virtually identical to the conditions imposed in connection with other mixed and shared funding orders) are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. Applicants state that, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its separate account's investment in the affected fund. Applicants represent that this requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the Funds.

29. Applicants maintain that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners, and that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Applicants state that, under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Applicants further state that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment advisor initiated by contract owners. According to the Applicants, the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

30. Applicants note that, nevertheless, a particular insurer's disregard of voting instructions could conflict with the majority of contract owner voting instructions. Applicants state that the insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. Applicants further state that, if the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Fund's election, to withdraw its Separate Account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. Applicants represent that this requirement will be provided for in the agreements entered into with respect to participation by insurance companies in the Funds.

31. Applicants submit that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Applicants note that each type of insurance product is designed as a long-term investment program.

32. Applicants represent that each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. Applicants state that there is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance and variable annuity contracts,will lead to different investment policies for different types of variable contracts. First, Applicants state that minimum death benefit guarantees generally are specifically provided for by particular charges, and always are supported by general account reserves as required by state insurance law. Second, Applicants state that certain variable annuity contracts also have minimum death benefit guarantees and that, to the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the differing insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case. Third, Applicants note that the sale, persistency, and ultimate success of all variable insurance products depend, at least in part, on satisfactory investment performance, which provides an incentive for the insurer to optimize investment performance. Fourth, Applicants maintain that, under existing statutes and regulations, an insurance company and its affiliates can offer a variety of variable annuity and life insurance contracts, some with death benefit guarantees of different types and significance (and different degrees of risk for the insurer), some without death benefit guarantees, all funded by a single mutual fund.

33. Applicants assert that, furthermore, no one investment strategy can be identified as appropriate to a particular insurance product. According to the Applicants, each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. Applicants state that a fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants maintain that permitting mixed and shared funding will provide economic justification for the continuation of Advantus Fund and, it is expected, of any Future Fund. Applicants state that, in addition,

permitting mixed and shared funding also will facilitate the establishment of additional portfolios serving diverse goals, and that the broader base of contract owners can be expected to provide economic justification for the creation of additional portfolios with a greater variety of investment objectives and policies.

34. In connection with the proposed sale of shares of the Funds to Qualified Plans, Applicants submit that either there are no conflicts of interest or there exists the ability by the affected parties to resolve any such conflicts without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans. Section 817(h) of the Code is the culmination of a series of Revenue Rulings aimed at the investment control of variable contract owners. Section 817 is the only section in the Code where separate accounts are discussed, and Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Applicants state that Treasury Regulation 1.817–5(f)(3)(iii), which establishes the diversification requirements for such portfolios, specifically permits, among other things, interests held by Trustees of a ''qualified pension or retirement plan'' and separate accounts to share the same underlying management investment company. Applicants, therefore, conclude that neither the Code nor the Treasury Regulations or Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity Separate Accounts, and variable life insurance Separate Accounts all invest in the same management investment company.

35. Applicants maintain that, while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts, and Qualified Plans, the tax consequences of distributions from variable contracts and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds. Applicants state that, when distributions are to be made, and the Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the affected Fund at its net asset value. Applicants represent that the Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan, and that the life insurance company will surrender values from the separate account into the general account to make distributions in accordance with the terms of the variable contract.

36. Applicants state that, with respect to voting rights, it is possible to provide an equitable means of giving such voting rights to separate account contract owners and to Qualified Plans. Applicants further state that the transfer agent for each fund will inform each Participating Insurance Company of its share ownership in each Separate Account, as well as inform the trustees of Qualified Plans of their holdings. According to the Applicants, the Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

37. Applicants submit that the ability of the Funds to sell their shares directly to Qualified Plans does not create a ''senior security'' with respect to any variable annuity or variable life contract owner as opposed to a participant under a Qualified Plan. Applicants note that the term ''senior security'' is defined under Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' Applicants state that, regardless of the rights and benefits of participants under the Qualified Plans or contract owners under variable contracts, the Qualified Plans and the Separate Accounts, respectively, have rights only with respect to their respective shares of the Funds. Applicants state that the Qualified Plans and the Separate Accounts can redeem such shares of the Funds only at the net asset value of the shares, and that no shareholder of a Fund will have any preference over any other shareholder of such Fund with respect to distribution of assets or payment of dividends.

38. Applicants maintain that there are no conflicts between the contract owners of the Separate Accounts and the participants under the Qualified Plans with respect to the state insurance commissioners veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. Applicants state that the basic premise of shareholder voting is that not all share holders agree with a particular proposal. According to the Applicants, this does not mean that there are any inherent conflicts of interest between shareholders. Applicants state that the state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot comply redeem their separate accounts out of one fund and invest in another. Applicants note that time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants state that, on the other hand, the trustees of Qualified Plans can quickly make the decisions and implement the redemption of their plans' shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that, even if there should arise issues where the interests of Qualified Plans are in conflict, these issues can be resolved almost immediately in that the trustees of the Qualified Plans can, on their own, redeem the shares out of the Funds.

39. Applicants submit that, regardless of the type of shareholder in a Fund, the responsible advisor will continue to manage a Portfolio's investments solely and exclusively in accordance with each such Portfolio's investment objectives and restrictions as well as with any guidelines established by the Board of that Fund. Applicants note that individual Portfolio manager work with a pool of money and do not take into account the identity of the shareholders. Applicants represent that Advantus Fund thus is, and any Future Fund will be, managed in the same manner as any other mutual fund. Applicants state that, if shareholders are not pleased with a mutual fund's investment results, or the manner in which the mutual fund is being operated, these shareholders may redeem their shares. Applicants note that, since Advantus Fund is, and any Future Fund is expected to be, sold without the imposition of any sales load, such redemption is to net asset value without the imposition of any other charge or fee. According to the Applicants, it is the duty of the management of a mutual fund, including its board of directors or trustees, as the case may be, to keep shareholders informed through updated prospectuses and annual and semi-annual reports. Applicants state that these periodic communications to shareholders function as these communications are intended. Applicants represent that Qualified Plans, as well as contract owners, thus will be given up-to-date information necessary for them to make informed investment decisions.

40. Applicants state that the difference between a Qualified Plan shareholder and a contract owner whose variable contract invests in a Fund is that the Qualified Plan shareholder immediately can redeem its shares in the fund and reinvest the proceeds of

such a redemption, while the contract owner either must wait for the Participating Insurance Company to find another suitable investment medium or must exchange contracts, both of which strategies require multiple steps and some period of time.

41. Applicants maintain that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. Applicants state that these factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Applicants note that, for example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants state that use of the Funds as common investment media for variable contracts, as well as for Qualified Plans, would reduce or eliminate these concerns. Applicants further state that mixed and shared funding also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Also, Applicants maintain that Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of the responsible advisors and their affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. According to the Applicants, mixed and shared funding, including the sale of shares of a Fund to Qualified Plans, also would permit a greater amount of assets available for investment by such Fund, thereby promoting economies of scale, permitting increased safety through greater diversification, and making the addition of new Portfolios to a Fund more feasible. Therefore, Applicants believe that making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and that this should result in increased competition with respect to both variable contract design and pricing, which in turn can be expected to result in more product variation and lower charges.

42. Accordingly, Applicants submit that the relief requested herein is fully consistent with the policy and purpose of the 1940 Act. In connection with the proposed sale of shares of the Funds to Qualified Plans in particular, Applicants further submit that the intended use of the Funds with Qualified Plans is not that dissimilar from the intended use of the Funds with variable contracts, in that Qualified Plans, like variable contracts, are generally long-term retirement vehicles. Applicants further submit that the sale of shares of the Funds to Qualified Plans does not increase the risk of material irreconcilable conflicts to such Funds or to the participating Separate Accounts.

43. Applicants see no significant legal impediment to permitting mixed and shared funding. Applicants note that separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding will have any adverse Federal income tax consequences.

44. Applicants submit that the Commission has issued numerous orders permitting mixed and shared funding, including ones where shares of the underlying mutual fund used for funding variable contracts also would be sold to qualified pension and retirement plans. Therefore, Applicants maintain that, as the Commission has tacitly acknowledged, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a), or 15(b) or Rules 6e–2 or 6e–3(T).

Applicants' Conditions

Applicants consent to the following conditions:

1. A majority of each Fund's Board shall consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filed by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board of each Fund will monitor that Fund for the existence of any material irreconcilable conflict between and among the interests of the contract owners of all Separate Accounts and the participants of all Qualified Plans investing in that Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of Qualified Plans; (f) a decision by a Participating Insurance company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Fund, such Qualified Plan will execute a fund participation agreement with the Fund, including agreement to comply with the conditions set forth herein to the extent applicable. A Qualified Plan shareholder will execute an application with each Fund that contains an acknowledgment of this condition at the time of the Qualified Plan's initial purchase of shares of such Fund.

4. Participating Insurance Companies, the responsible advisors, and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (collectively, the ''Participants'') will report any potential or existing conflicts to the respective responsible Board(s). Participants will be responsible for assisting the Boards in carrying out the responsibilities of the Boards under these conditions by providing the Boards with all information reasonably necessary for the Boards to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the respective responsible Board(s) whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts to and to assist the Boards will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in a Fund under their agreements governing participation in

the Fund and these responsibilities will be carried out with a view only to the interests of the contract owners and, if applicable, Qualified Plan participants.

5. If it is determined by a majority of a Board, or a majority of the disinterested, directors or trustees, as appropriate, of a Board, that a material irreconcilable conflict exists, then the relevant Participating Insurance Companies and Qualified Plans, at their expense and to their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors or trustees, as the case may be), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the affected Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of such Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of the Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, or, if applicable, a decision by a trustee of a Qualified Plan to disregard Qualified Plan participant voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer or Qualified Plan may be required, at the affected Fund's election, to withdraw the insurer's Separate Account's investment in the Fund or the Qualified Plan's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and all Qualified Plans under their agreements governing participation in the Funds and these responsibilities will be carried out with a view only to the interests of contract owners and participants in the Qualified Plans, as applicable.

For purposes of this Condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will a Fund or its advisor be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition 5 to establish a new funding medium for any variable contract if any materially and offer to do so has been declined by vote of a majority of the contract owners adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 5 to establish a new funding medium for the Plan if: (a) a majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline that offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes that decision without a Plan participant vote.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all variable contact owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of the Funds held in their Separate Accounts in a manner consistent with voting instructions timely-received from contract owners. Each Participating Company will vote shares of a Fund held in the Participating Insurance Company's Separate Accounts for which no voting instructions from contract owners are timely-received, as well as shares of a Fund which the Participating Insurance Company itself owns, in the same proportions as those shares of the Fund for which voting instructions from contract owners are timely-received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts participating in the Funds calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Funds shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Funds. Trustees of Qualified Plans will vote shares held by Qualified Plans in accordance with the terms of those Qualified Plans.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which for these purposes, shall be persons having a voting interest in their respective Portfolios), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. Each Fund shall disclose in its prospectus that (a) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies and certain qualified pension and retirement plans, (b) material irreconcilable conflicts possibly may arise due to differences of tax treatments and other considerations, and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict. Each Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

10. If, and to the extent that, Rule 6e–2 or Rule 6e–3(T) under the 1940 Act are amended, or Rule 63–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2, 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, shall submit to each Fund's Board such reports, materials, or data as the Board reasonably may request so that the directors or trustees, as appropriate, of the Fund may fully carry out the obligations imposed upon the Board by the conditions contained in this application and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to a Fund's Board, when the Board so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds.

12. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43643; File No. SR–Amex–00–59]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') field with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in detail in Part II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions approved by the Commission on June 2, 2000.[3] Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions inequity options.[4] The pilot program entities a floor broker to, under certain conditions, cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowed at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for market—and the crowd then wants to part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the almost six months since the pilot program began, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000). The pilot program was subsequently extended for an additional 90 days, ending November 29, 2000. *See* Securities Exchange Act Release No. 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[5] Amex trading floor practices provided specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. See Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000)

program for an additional 90 days, pending consideration of a related proposed rule change it has filed with Commission [6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

Because the pilot program is due to expire on November 29, 2000, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [8] in general and furthers the objectives of Section 6(b)(5) of the Act [9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–00–59 and should be submitted by December 28, 2000.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will allow the pilot program, otherwise due to expire on November 29, 2000, to remain effective and in place uninterrupted while revisions are being considered, and does not raise any new regulatory issues.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through February 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31138 Filed 12–6–00; 8:45 am]

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[6] *See* File No. SR–Amex–00–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra*, note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.*, Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43639; File No. SR–CBOE–00–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Membership Fees

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend the New Member Orientation fee imposed by the Exchange, which is currently set forth in the Exchange's Membership Fee Circular. The Exchange further proposes to add certain clarifying language to the Membership Fee Circular with respect to the application of the Corporation/Partnership/LLC fee. The text of the proposed rule change is available at the Office of the Secretary of the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase from $200 to $500 the fee that it charges applicants seeking membership as a Market-Maker or Floor Broker for the three-day Orientation Program provided to applicants by the Exchange. The Exchange states that the purpose of this proposed fee increase is to cover the costs of the Orientation Program, which are no longer adequately covered by the current $200 fee. The change to the New Member Orientation Fee is proposed to take effect on January 1, 2001.

The Exchange further proposes to amend its Membership Fee Circular to clarify the application of the Corporation/Partnership/LLC fee. This fee is imposed by the Exchange on each new firm applicant for membership on the Exchange. It is also applicable to a member organization that changes its legal structure (*e.g.*, from partnership to corporation or the reverse, from partnership to LLC or the reverse, or from corporation to LLC or the reverse).

The clarification concerns the applicability, when a member organization changes its legal structure, of certain other membership and membership application fees generally imposed by the Exchange. These include a General Partner fee, and Executive Officer fee, an LLC Manager fee, a Principal Shareholder fee, a Limited Partner fee, and an LLC Member fee.

The Exchange proposes to amend the Membership Fee Circular to clarify that if a member organization changes its legal structure or in the event of a merger between current CBOE member organizations, General Partners, Executive Officers, LLC Managers, Principal Shareholders, Limited Partners and LLC Members listed on the Uniform Application for Broker-Dealer Registration Form (''Form BD'') of the member organization(s) prior to the change will not be assessed any fees in connection with the change. This proposed revision to the Membership Fee Circular codifies the current practice of the Exchange in addressing this situation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and furthers the objectives of Section 6(b)(4)[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than 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 CBOE. All submissions should refer to File No. SR–CBOE–00–54, and should be submitted by December 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31137 Filed 12–6–00; 8:45 am]

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43640; File No. SR–DTC–00–19]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Depository Trust Company Relating to a New Tax Service Called DALI

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on November 20, 2000, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. 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

DTC has filed a proposed rule change to implement a new tax service called ''DALI'' (an acronym for data link for intermediaries). DALI is a communications hub to be used by U.S. payors such as banks, broker-dealers and foreign customers to exchange data in order to determine the proper withholding amount and to report U.S. withholding tax on payments such as dividends and interest made to a foreign payee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. [2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change consists of the addition of DALI to DTC's tax services. DALI is a communications hub that will allow financial institutions (typically, a U.S. paying institution and its foreign customer payee) to exchange the data necessary to determine correct withholding and reporting of U.S. tax on payments such as dividends and interest to a foreign payee. DALI will also provide a storage facility for payment allocation information necessary for tax reporting. At a later stage, DALI will be expanded to also serve as a document repository for payee tax documentation and a storage facility for payment allocation information necessary for tax reporting at a beneficial owner level.

Background

Changes in U.S. tax regulations concerning U.S. withholding tax and reporting on payments of U.s. source income made to foreign payees will become effective on January 1, 2001.[3] The new withholding regulations require U.S. withholding agents, such as banks and broker-dealers that pay dividends and interest to foreign customers, to determine the appropriate withholding tax rates for such payments based upon the tax status of the beneficial owner of the payment and to allocate the payments among each beneficial owner or classes of owners for annual reporting to the Internal Revenue Service. As a consequence, when the U.S. financial institution's foreign customer is not the beneficial owner (for example, a foreign intermediary holding securities on behalf of its customers), the U.S. financial institution, in its capacity as U.S. withholding agent, must obtain payment allocation information from its direct foreign intermediary customer, based upon the identity of tax status of the ultimate beneficial owners of each payment made by the U.S. financial institution to its foreign customer.

Development of DALI

DTC was asked to provide the DALI service by several of its participants (referred to here as the ''Consortium'') that sought a common solution to enable them to comply with the new withholding tax regulations. The Consortium also consulted with Price WaterhouseCoopers (''PWC'') concerning the feasibility of developing a centralized and standardized software system that could be shared among the Consortium. At the request of the Consortium and industry groups, DTC agreed to act as a project manager for the development of the DALI software system and to operate and maintain the completed system as a DTC service. DTC and the Consortium retained PWC to develop the core DALI software. The Consortium agreed to pay PWC's software development costs and DTC's out-of-pocket product development costs such as hardware and operating software. The Consortium expects to recoup these costs over time from the proceeds of excess user service fees.[4]

Description of DALI System

DALI is a communications hub that withholding agents and foreign payees can use to transmit and receive the information necessary for tax withholding and reporting under the new tax regulations. DALI will be available to participants and non-participant customers for use with respect to withholding on varying types of payments and not restricted to position in securities held at DTC. DALI may be accessed by File Transfer Protocol and through the Internet at DTC's website.

In its simplest form, a typical message flow through DALI would proceed as follows:

(1) A U.S. financial institution notifies its foreign customer of a forthcoming payment and requests payment allocation information on the payment.

(2) The foreign intermediary responds with allocation information based upon the characteristics of the beneficial owners of the payment; and

(3) The U.S. financial institution confirms allocation instructions.

DALI will later be used to also validate, track, and retain required payee tax documentation such as IRS Forms W–8 and W–9 and to aggregate information for recordkeeping and tax reporting.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3) of the Act [5] and the rules and regulations thereunder because it will promote foreign investments in U.S. securities by facilitating the exchange of information necessary for payors of U.S. income to determine the correct withholding tax treatment of payments made to foreign payees. DTC also believes that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Representatives of several of DTC's participants that comprise DTC's Foreign Taxes Legal Working Group requested at a meeting held on January 24, 2000, that DTC provide a service to facilitate compliance with the new U.S. tax withholding regulations effective January 1, 2001. This request was made in writing by memorandum to DTC dated February 1, 2000, from the group of financial institutions then comprising the DALI Consortium (Morgan Stanley, Dean Witter, Goldman Sachs, Merrill Lynch, Prudential Securities, Salomon Smith Barney/Citibank, Pershing/DLJ, Chase Manhattan Bank, Brown Brothers Harriman, and Bear Stearns). Except as set forth above, DTC has not solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(4) [7] thereunder because the rule change (1) effects a change in an existing service of EMCC that does not adversely affect the safeguarding of securities or funds in the DTC's custody or control or for which it is responsible and (2) does not significantly affect DTC's respective rights or obligations or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Sections 1441, *et seq.*, of the Internal Revenue Code and regulations promulgated thereunder.

[4] The proposed fee schedule for users of the DALI service is being developed and will be filed with the Commission shortly.

[5] 15 U.S.C. 78q–1(b)(3).

[6] 15 U.S.C. 78s(B)(3)(A)(iii).

[7] 17 CFR 19b–4(f)(4).

change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–00–19 and should be submitted by December 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31139 Filed 12–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43641; File No. SR–PCX–00–40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Audit Committee Requirements for Listed Companies

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly-owned subsidiary, PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCXE. The Exchange filed Amendment No. 1 to the proposed rule change on November 22, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCXE proposes to amend its rules pertaining to composition of audit committees of listed companies as recommended by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees. The text of the proposed rule change is set forth below. New text is in italics. Deletions are in brackets.

Corporate Governance

Rule 5.3(a) Conflicts of interest—No change.

Rule 5.3(b) Independent Directors/Audit Committee

The Corporation shall require that each listed domestic issuer have at least two independent directors on its board of directors. Such issuer must maintain an audit committee. [a majority of which] *All audit committee members* must be independent directors *that satisfy the audit committee requirement set forth below.*

(1) Audit Committee Charter. The board of directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) That the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and

(iii) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectively and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.

(2) Composition/Expertise Requirement of Audit Committee Members.

(i) Each audit committee will consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company (''Independent'');

(i) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and

(iii) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

(3) Independence Requirement of Audit Committee Members. In addition to the definition of Independent provided in 5.36(2)(i), the following restrictions shall apply to every audit committee member:

(i) Employees: A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. ''Affiliate'' includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(ii) Business Relationship. A director (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (e.g., a consultant) may serve on the audit committee only if the company's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a direct pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated. ''Business relationships'' can include commercial, industrial, banking consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 7s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter dated November 20, 2000 from Cindy L. Sink, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). Amendment No. 1 specifies an implementation plan for the proposed rule change.

committee without the above-referenced board of directors' determination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

(iii) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(iv) Immediate Family. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. ''Immediate Family'' includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

(v) Notwithstanding the requirements of subparagraphs (3)(i) and (3)(iv), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(4) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;

(ii) the financial literacy of the audit committee member;

(iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

(iv) the annual review and reassessment of the adequacy of the audit committee charter.

(5) ''Officer'' has the meaning specified in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.

(6) Initial Public Offering. Companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualifier member in place within twelve months of listing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCXE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change modifies PCXE Rule 5.3(b), on audit committee requirements of listed domestic issuers, to conform to recommendations made by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees and rule changes adopted by other SROs.[4] The proposed rule change specifies four requirements for a qualified audit committee, defines certain terms for purposes of the proposed audit committee requirements, and sets forth requirements for companies listing on the Exchange in conjunction with an initial public offering.

First, proposed Rule 5.3(b)(1) requires the board of directors of companies listed on the Exchange to adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify: (i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; (ii) that the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and (iii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company; that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor; and for recommending that the board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

Second, proposed Rule 5.3(b)(2) sets forth the composition and expertise requirements of audit committee members. The proposal requires: (i) Each audit committee to consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company (''Independent''); (ii) each member of the audit committee to be financial literate, as such qualification is interpreted by the company's board of directors in its business judgment, or to become financially literate within a reasonable period of time after his or her appointment to the audit committee; and (iii) at least one member of the audit committee to have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

Third, proposed Rule 5.3(b)(3) provides the independence requirements of audit committee members. In addition to the definition of Independent provided in Rule 5.3(b)(2)(i), the following restrictions apply to every audit committee member.

(i) *Employees.* A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. ''Affiliate'' includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(ii) *Business Relationship.* A director (a) who is a partner, controlling

[4] *See* Securities Exchange Act Release Nos. 42231 (Dec. 14, 1999), 64 FR 71523 (Dec. 21, 1999) (approving SR–NASD–99–48); 42232 (Dec. 14, 1999), 64 FR 71518 (Dec. 21, 1999) (approving SR–AMEX–99–38); and 42233 (Dec. 14, 1999), 64 FR 71529 (Dec. 21, 1999) (approving SR–NYSE–99–39). The proposed rule changes were, in large part, adapted from NYSE Listed Company Manual Sections 303.00, 303.01, and 303.02.

shareholders, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (*e.g.*, a consultant) may serve on the audit committee only if the company's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated. ''Business relationships'' can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-reference board of director's determination after three years following the termination of, as applicable, either (a) The relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

(iii) *Cross Compensation Committee Link.* A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(iv) *Immediate Family.* A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. ''Immediate Family'' includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

(v) Notwithstanding the requirements of subparagraphs (3)(i) and (3)(iv) of Rule 5.3(b), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

Fourth, proposed Rule 5.3(b)(4) sets forth on ongoing written affirmation requirement. The proposal provides that as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provided the Exchange written confirmation regarding: (i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above; (ii) the financial literacy of the audit committee number; (iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and (iv) the annual review and reassessment of the adequacy of the audit committee charter.

Proposed Rule 5.3(b)(5) defines ''Officer'' to have the meaning specified in Rule 16a–1(f) under the Act, or any successor rule. Moreover, proposed Rule 5.3(b)(6) provides that companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualified member in place within twelve months of listing.

Finally, the Exchange proposes to implement a transition period in order to provide its issuers with sufficient time to come into compliance with the proposed rule change.[5] Specifically, the Exchange proposes (i) to ''grandfather'' all public company audit committee members qualified under current PCX rules until they are re-elected or replaced and (ii) give companies eighteen months from the date of SEC approval of this rule filing to recruit the requisite members for their audit committees. Issuers listed on the Exchange as of the effective date of the proposed rule change will have six months to adopt a formal written audit committee charter.

2. Statutory Basis

The PCXE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCXE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCXE did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–00–40 and should be submitted by December 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31140 Filed 12–6–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3491]

Bureau of Educational and Cultural Affairs; College and University Affiliations Program for Algeria; Request for Grant Proposals

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program to support the development of programs of instruction and faculty training at one or more universities in Algeria in business management and entrepreneurship, public administration, or another field with significant potential impact on the Algerian economy. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to pursue institutional or departmental objectives in partnership with (an) Algerian institution(s) with support from the College and University Affiliations Program. The means for achieving the objectives of the applicant and its partner(s) may include mentoring, teaching, consultation, research, distance education, internship training, and professional outreach to public and private sector managers and entrepreneurs.

Overview and Project Objectives: The project is designed to assist one or more Algerian universities to develop a modern curriculum and program in business management or public administration to facilitate the development of business activity and the quality, efficiency and integrity of the private and public sectors in Algeria. While priority will be given to competitive proposals in business management, proposals in public administration and other fields are also eligible if the proposals demonstrate their potential impact on the Algerian economy.

In business management, proposals emphasizing practical strategies to assist the faculty to develop a new curriculum in business management focusing in accounting, finance, banking, and entrepreneurship are particularly encouraged.

In public administration proposals with potential economic impact through assistance with curriculum reform and faculty training in fields such as taxation, financial management, land registry/ownership and property rights are also eligible. All proposals should explain potential impact on the Algerian economy.

For each project, applicants are encouraged to develop outreach to and collaboration with practitioners by including them, together with junior and senior instructors, in working groups for faculty development and curriculum design and development.

Bureau policy stipulates that awards to organizations with less than four years' experience in conducting international exchanges are limited to $60,000. The Bureau anticipates awarding one or two grants from a total of $240,000 that is expected to be available to support this program. Funds will be awarded for a period up to three years to defray the costs of exchanges, to provide educational materials, and to increase library holdings and improve Internet connections. Up to 25% of the grant total may be used to defray the costs of project administration. Indirect administrative costs are not an eligible expense for Bureau funding under this competition, but may be presented as part of the U.S. institutional contribution.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators or graduate students for any appropriate combination of teaching, mentoring, internships, in-service training and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester for participants from Algeria are strongly encouraged and program activities must be tied to the goals and objectives of the program. Proposals may also include English language training for selected participants whose prior knowledge of English needs to be activated or refreshed. Visits by representatives of the American partner institution to Algeria are not required, but short visits may be proposed for eventual implementation should conditions permit. All applicants should read the U.S. Department of State Travel Warning for Algeria dated March 31, 2000.

U.S. Institution and Participant Eligibility: In the United States, participation in the program is open to accredited two and four-year colleges and universities, including graduate schools, as well as to other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c). Applications from consortia or other combinations of U.S. colleges and universities are eligible. Secondary U.S. partners may include governmental and non-governmental organizations, as well as non-profit service and professional organizations. The lead U.S. university in the consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

Participants representing the U.S. institution must be U.S. citizens. With the exception of an outside consultant reporting on the degree to which project objectives have been achieved, participants who are traveling under the Bureau's grant funds must be teachers, advanced graduate students, who are teaching or research assistants, or administrators from the participating institution(s). Advanced graduate students are eligible for Bureau-funded participation in this program only if they are working under the direction of an accompanying faculty participant.

Algerian Institution and Participant Eligibility: In Algeria, the partner must be a recognized institution of post-secondary education. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations concerned with issues in business development or public administration training in Algeria.

Foreign participants must be citizens or permanent residents of Algeria and qualified to receive a J–1 visa.

Budget Guidelines: Applicants may submit a budget of up to $240,000. Requests for amounts smaller than the maximum are eligible. Budget and budget notes should carefully justify the amounts needed. There must be a summary budget as well as a breakdown reflecting the program and administrative budgets including unit costs. Cost sharing will be considered an important indicator of institutional commitment.

Please refer to the Solicitation Package for complete guidelines and formatting instructions.

[7] 17 CFR 200.30–3(a)(12).

Announcement Title and Number: All correspondence with the Bureau of Educational and Cultural Affairs concerning this RFGP should reference the above title ''College and University Affiliations Program in Algeria'' and reference number ECA/A/S/U–01–13.

FOR FURTHER INFORMATION CONTACT: Contact the Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349, SA–44; U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone (202) 619–5289, fax: (202) 401–1433, e-mail: mpizarro@pd.state.gov to request a Solicitation Package.

The Solicitation Package contains detailed award criteria, required application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the above reference number on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfgps. Please read all information before downloading.

Deadline of Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, March 30, 2001. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received on a later date will not be accepted. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate Program Dates: Grants should begin on or about August 1, 2001.

Duration: August 1, 2001–August 31, 2004.

Submissions: The U.S. institutional partner must submit the proposal. Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Ref.: ECA/A/S/U–01–13, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

All copies should include the documents specified under Tabs A through E in the ''Project Objectives, Goals, and Implementation'' (POGI) section of the Solicitation Package. The documents under Tab F of the POGI should be submitted with the original application and with one of the ten copies.

Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' Sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Section of the U.S. Embassy in Algiers for its review, with the goal of reducing the time it takes to get the Embassy's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content.

Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: State Department officers in Washington, D.C. and overseas will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered or weighed.

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and resourcefulness. Proposals should exhibit sensitivity to the region, and have reasonable and feasible project objectives that are relevant to the needs of an Algerian university. Proposals should describe projected benefits to the institutions involved as well as to wider communities of educators and practitioners in Algeria.

2. *Program Planning:* Proposals should include creative, realistic and feasible program plans for the development of working groups for faculty and curriculum development; a detailed schedule, which should include a well-reasoned combination of useful and appropriate mentoring, teaching techniques and outreach activities supporting the project objectives.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives and how these issues will be addressed during project implementation. Proposals should also outline the institutional profile of each participating institution with regard to issues of diversity.

4. *Institutional Capacity and Commitment:* Proposals should demonstrate significant understanding of the needs and capacities of the Algerian university as well as the needs and capacity of the U.S. institution, and should demonstrate a strong commitment to on-going cooperation during and after the period of the grant activity. Relevant factors include: the

match between participating organizations or departments, and availability of sufficient number of faculty and/or administrators willing and able to participate in project activities. Proposals should demonstrate a promise of long-term impact and a plan for follow-on activities.

5. *Institutional Record/Ability:* Proposals should demonstrate an institutional record of administering successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the State Department's contracts officers. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Reviewers will also consider the quality of exchange participants' academic credentials, skills, commitment and experience relative to the goals and activities of the project plan.

6. *Project Evaluation:* The proposal should outline a methodology to assess progress toward the achievement of project goals. The final evaluation should include an external component and observations about anticipated long-term impact on the Algerian economy.

7. *Cost-Effectiveness:* Administrative and program costs should be reasonable and appropriate with cost sharing provided as a reflection of commitment to the pursuit of project objectives.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the U.S. North African Economic Partnership.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 29, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–31076 Filed 12–6–00; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3490]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Summer Institute on Education Reform for Nigerian Tertiary Education Administrators and Policy Makers

SUMMARY: The African Programs Branch of the Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for a Summer Institute on Education Reform for Nigerian Tertiary Education Administrators and Policy Makers. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to provide a six-week program for up to 25 Nigerian tertiary level education administrators and government officials responsible for making and implementing education policy. Requested Bureau funding must not exceed $200,000.

All Summer Institute programming and logistics including design and implementation of the academic, cultural, and administrative components will be the responsibility of the grantee. These responsibilities include (1) an academic component that adheres closely to the goals and objectives set forth in the RFGP, (2) a cultural component that complements and reinforces material covered in the academic component, and includes a stay of up to a week in Washington and a trip to another major U.S. city, and 3) an administrative component to provide for the comfort and well-being of the participants which includes arranging and budgeting for housing, meals, transportation in the U.S., allowances for incidental expenses, books, and excess baggage.

Proposals must conform to requirements set forth in the Solicitation Package, that is, the program information and guidelines stated in this Request for Grant Proposals (RFGP) as well as the standard Proposal Submission Instructions (PSI). Applications not adhering to the conditions set forth herein may be deemed technically ineligible.

The guidelines set forth in this RFGP are specific to the program mentioned above and are in addition to the standard guidelines outlined in the PSI. In any instance that there is a perceived disparity between the standard or program-specific guidelines, the program-specific guidelines listed in the RFGP are to be the dominant reference. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

A. Proposal Submission Information

1. Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/AF–01–02.

2. Application Submission Deadline

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Thursday, February 1, 2001. Faxed documents will not be accepted at any time. Documents postmarked on the due date but received on a later date will not be accepted.

Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven (7) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/AF–01–02,* Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

3. For Further Information or To Request a Solicitation Package

Please contact the program officer, Carol Herrera, by mail at: African

Programs Branch, Office of Academic Exchanges (ECA/A/E/AF)—Rm. 232, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Ph: (202) 619–5405, F: (202)619–6137, E-mail: *cherrera@pd.state.gov.*

4. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Note: Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

5. Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Fulbright-Hays Act.

6. Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

B. Program Information

1. Background

Since 1998 the Clinton Administration has launched several special initiatives for education in Africa to further African integration into the global community by improving the quality of, and technology for, education in Africa. As a result of President Clinton's recent visit to Nigeria, the Africa Programs Branch seeks to create a Summer Institute on Education Reform for Nigerian Tertiary Education Administrators and Policy Makers. Under the Fulbright banner the program further seeks to promote mutual understanding between the peoples of the United States and Nigeria.

Over the past two decades, large increases in the number of students at every level of the education system coupled with diminishing resources provided by Nigeria's military rulers dramatically decreased the quality of education in Nigeria. The proposed program seeks to engage Nigerian tertiary education administrators, government policy makers and other stakeholders in a detailed review of major reform issues in the U.S. that will help the participants identify and explore potential areas of reform within the Nigerian education system and approaches to instituting reforms.

2. Program Description

The Summer Institute seeks to encourage key stakeholders and decision makers to promote a bolder vision for the future of Nigerian tertiary education and establish long-term educational reform goals that benefit the nation as a whole. The six-week program is intended to improve the quality of tertiary education in Nigeria by (1) helping participants identify and examine potential areas of reform in Nigerian tertiary education by thoughtfully reviewing American experiences, (2) promoting cooperation, coordination, and cross-fertilization of ideas among the participants and with U.S. facilitators and counterparts, (3) through case studies, site visits and other experiential means, examining American examples of educational reform efforts applicable to a Nigerian context and, (4) strengthening participants' leadership, management, and organizational skills.

The 25 participants will be selected not only from among university administrators but from policy makers as well.

Half of the group will be composed of senior university administrators representing federal and state universities, polytechnics, teacher colleges, and a new private university. The rest of the group will be education policy makers from the Federal Ministry of Education, some state governments, important commissions such as the Examination Council (WAEC), the National Universities Commission (NUC), the Committee of the Colleges of Education and the National Assembly's Education Committee. The entire participant selection process will be carried out in Nigeria by the Public Affairs Section of the American Embassy.

3. Program Objectives

3.1 Identifying and Examining Potential Areas of Reform in Nigerian Tertiary Education

Although the program will reference American examples of education reform, the wide disparity between the American and Nigerian contexts demands that the focus be on the Nigerian education system. Any American examples that are used must have relevance and applicability to the realities of Nigeria. It is not enough that the host institution provide a menu of recent American reform efforts and examples of successes and failures with the hope that the participants will glean what they need from the American model. This should not be perceived to be an American Studies program on Education Administration but an Education Administration program specifically designed for Nigerian education stakeholders. Specific topics may include but will not be limited to: establishing coordination among the various components of the higher education system, turning policy into practice, education funding and fundraising, accreditation, testing, teacher training, certification, setting admissions standards, hiring practices, staff development, community outreach, legislative oversight, publications, student government, etc.

The host institution will prepare a needs assessment to be carried out prior to the participants arrival in the U.S. to determine what areas the participants identify as most relevant and develop the program around those perceived priorities. The approach should be one that provides in-depth content on a few selected topics rather than cursory information on a wide variety of topics.

3.2 Promoting Cooperation, Coordination, and Cross-fertilization of Ideas Among the Participants and With U.S. Facilitators and Counterparts

Sessions and activities should be designed to enable the participants to use critical and creative thinking skills

and teamwork in developing solutions and approaches to effect realistic and implementable reform goals in the areas of interest identified in the needs assessment.

3.3 Examining American Examples of Educational Reform Efforts Applicable to a Nigerian Context

Through case studies, site visits and other experiential means, the participants will study examples of American education reform that correspond to the areas of interest identified in the needs assessment. Activities should include but are not limited to visits to a selection of universities; pertinent government offices, both federal and state; federal and state legislative education committees; meetings with university administrators such as presidents, vice presidents, and deans.

Examples used should, as closely as possible, demonstrate challenges similar to those that confront the Nigerian administrators; *i.e.,* lack of funding, poorly trained staff, low staff morale due to insufficient pay, overcrowded classes, student unrest, etc.

3.4 Strengthening Participants' Leadership, Management, and Organizational Skills

Potential topics may include but are not limited to: participatory planning; developing clear, implementable goals and objectives; assessment and analysis; formulating action plans; monitoring and evaluation (of faculty, staff, students, curriculum, etc.); staff development; accountability and the ethical dimensions of leadership; building a constituency for change; promoting ownership and commitment; interpreting and adapting to a changing environment; being responsive to constituencies, etc.

4. Program Specific Guidelines

4.1 Program Duration/ Dates

The program will be approximately six weeks in length and should begin and end between the dates of June 1, 2001 and September 30, 2001. These dates will include the arrival and departure dates of the participants.

4.2 Number/Types of Participants

There will be a maximum of 25 participants, approximately half of whom will be university administrators and half of whom will be policy makers. They will come from various parts of Nigeria and various ethnic groups and will likely be predominantly male. Applicants may wish to take this into consideration in planning and logistics. If the number of women in the group is small, efforts may be needed to ensure their full inclusion and participation. Most, but not all, will have at least some overseas experience, having attended international conferences, participated in international visitors programs, etc. Some will have spent time studying abroad, primarily in the U.K. but other countries as well including the U.S. Minimum qualifications for all participants will be the equivalent of BA/BS degrees from their national educational system.

4.3 Grantee Administrative Responsibilities

The following are the responsibilities of the grantee that will be covered under the terms of the grant and must be included in the budget submission. Please refer to the next section in this document (Section 5, Budget Guidelines) and PSI Budget Guidelines for further details.

• Travel/transportation in the U.S. Participants will arrive and begin their program in Washington, DC. The host institution will arrange all domestic transportation (excluding travel from Washington, DC to program site if by air) to and from airports and for cultural and educational activities provided under this project. For travel between Washington, DC and the Summer Institute site, the host institution may propose to substitute travel by bus or by train for travel by commercial air carrier, if ground transportation is a feasible, cost-effective travel alternative. However, if the host institution opts to use ground transportation between Washington, DC and the program site, the cost must be included in the budget proposal.

It is expected that the grantee will make arrangements to meet the participants upon arrival in Washington. Departures for return travel to Nigeria will be from the program site.

• Lodging: Accommodations in faculty guest quarters with single rooms or suites are preferred. Kitchen facilities for food storage and preparation to accommodate 25 participants should be provided. Lodging should be within reasonable walking distance to location of classes and/or readily accessible to university transportation system. Easy access to public transportation that enables participants to venture out into the larger community is desirable.

• Meals: A system of cash subsistence payments that allow participants to shop for and prepare their own meals is preferred. Cafeteria meal plans that can accommodate African preferences are possible. If using a meal plan exclusively, show clearly how the cost of meals will be covered when participants' travel away from campus or campus cafeterias are closed.

• Incidentals allowance: Each participant will receive an incidentals allowance of $15 per day for the full number of days of the Summer Institute including at the host institution, while in Washington, DC and/or other U.S. city visited.

• Book Allowance: The project will provide each participant with a supplemental book allowance of $150 per person. The institution should plan to assist participants in selection, acquisition and shipment of materials for their needs. The institution should develop a plan that allows participants to stretch their book allowance as far as possible through institutional or publishers' discounts.

• Health Coverage Administration: Although the Bureau assumes the responsibility of providing limited accident and sickness insurance coverage for participants, the grantee is responsible for enrolling all participants in the Bureau's health coverage program. A plan on providing participants with ready access to medical care should be included in the proposal.

4.4 Bureau Administrative Responsibilities

The following are the responsibilities of the Bureau and will not be covered under the terms of the grant and should not be included in the budget submission:

• Selection of Participants: The selection process will be carried out by the U.S. Public Affairs Section (PAS) in Nigeria. The Bureau will be responsible for and facilitate all communications between the PAS and the institution. The Bureau will provide the grantee with participants' curriculum vitae and other relevant information.

• International Travel: The Bureau is responsible for participants' international travel. The Bureau, in coordination with the U.S. Embassy in Abuja, will make international airline reservations and purchase round-trip international airline tickets for all participants from Nigeria to the site of the Summer Institute via Washington, D.C.

The Bureau will advise the host institution of the group's arrival/ departure schedules.

• Health Coverage: The Bureau provides limited accident and sickness insurance coverage for participants in the Summer Institute and will provide the grantee with the necessary instructions and forms to complete prior to the participants' arrival.

• Visas: Participants will travel on J–1 visas, Program number G–1–5, issued by the U.S. Consulate in Lagos. Program must comply with J–1 visa regulations. Please refer to Proposal Submission Instructions for further information.

5. Budget Guidelines

Applicants must submit a comprehensive budget for the entire program, not to exceed $200,000. The Bureau plans to award one grant at a level of approximately $200,000. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Proposals should maximize cost-sharing through private sector support as well as institutional direct funding contributions.

In addition to the guidelines provided here, applicants should refer to the Budget Guidelines section of the PSI.

5.1. Allowable Costs

Allowable costs for the program include:

• Instructional costs, *i.e.;* instructors' salaries, honoraria for outside speakers, educational course materials

• Lodging, meals, and incidentals for participants

• Expenses associated with cultural activities, *i.e.*; admission fees, transportation

• Administrative costs as necessary

5.2 Line-item Budget

Divide the Line-item budget into *Program* and *Administration* sections. The line-item budget should include and elaborate on the categories listed below.

5.2.1 Program Section. The program section of the budget includes (1) academic program costs, (2) participant maintenance and allowances, and (3) cultural activities and other related costs

5.2.1.1 Academic program costs. The Institution may choose to itemize academic program costs (I.A.1) or set a fee per participant (I.A.2)

—Itemized academic program costs. (I.A.1)

• Instructors' salaries as appropriate. Salaries, benefits, and services for instructors' salaries for the Institute classes. Identify each position and provide position title, role in the Institute, and, as appropriate, annual salary and percent of effort used for the Institute. Benefit costs should be stated separately from salary costs. Identify how benefits and services were computed.

• Honoraria and per diem for outside speakers, if any. (List names and amounts).

• Film and video rentals, educational materials, curricular needs (*i.e.* texts, course packs for classes), as appropriate.

—Fee per participant (I.A.2)

If the institution chooses to budget academic program costs as a fee per participant, please state what services are provided within that fee.

5.2.1.2 Costs for maintenance and other allowances for participants. (Clearly indicate the unit cost of each item.)

• Lodging. Housing may be in graduate dormitories, faculty residences, or other, as appropriate. Single rooms preferred.

• Meals. Meals may be provided through cash subsistence payments to participants, cafeteria meal plans, or a combination of both. If using a meal plan exclusively, show clearly how the cost of meals will be covered when participants travel away from campus or campus cafeterias are closed.

• Incidentals allowance. Include an incidentals allowance of $15 per person per day for full number of days of the Summer Institute at the host institution.

• Supplemental book allowance of $150 per person.

• Excess baggage allowance of $150 per person.

Note: Per diem rate for lodging and meals may not exceed published U.S. government allowance rates for the site of the Institute. Institutions may use per diem rates that are lower than official government rates.

5.2.1.3 Cultural activities and other program-related costs

• Cultural activities: entrance fees, overnight lodging, meals not provided for in B.2.

• Costs for Washington cultural and educational tour.

• Lodging for participants. It is acceptable for participants to share rooms on trips away from primary institute site.

• Meals for participants away from regular site.

• Incidentals allowance for participants. (Include a $15 per person per day incidental allowance for full number of days in Washington and/or other city.)

• Transportation: Ground transportation for group cultural and educational activities; ground transportation for airport arrival and departure.

• Escort Staff: Domestic transportation costs and per diem (or lodging and subsistence) for grantee escort staff for overnight cultural activities and Washington visit.

Note: The Bureau will provide round-trip international air tickets (from home country to Washington, D.C. to Institute site, and return to home country) for participants. The cost of travel for participants from Washington, D.C. to the institute site should *not* be included in a budget unless the institution opts to use ground transportation. If travel by means other than commercial airline are proposed, show transportation costs in the budget.

5.2.2 Administration Costs

• Staff requirements.

• Benefits.

• Other direct administrative expenses.

• Indirect expenses.

6. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

7. Proposal Preparation

Applicants should submit a complete and thorough proposal describing the program in a convincing and comprehensive manner. Since there is no opportunity for applicants to meet with reviewing officials, the proposal should respond to the criteria set forth in the solicitation package as clearly as

possible. Proposals should address succinctly, but completely, the elements described below and must follow all format requirements.

Proposals should include the following items:

Table of Contents
(Tab A) Assistance Award Proposal Cover Sheet
(Tab B) Executive Summary
(Tab C) Narrative
(Tab D) Budget Submission
(Tab E) Supporting documentation
(Tab F) Standard forms

Guidelines on specific sections follow.

7.1 Table of Contents

List all attachments.

7.2 Assistance Award Proposal Cover Sheet (Tab A)

One additional copy of the application cover sheet must be included in an envelope marked ''Attention: ECA/EX/PM.''

7.3 Executive Summary (Tab B)

In one double-spaced page, provide the following information about the project:

- Name of organization/participating institutions
- Beginning and ending dates of the program
- Proposed theme
- Nature of activity
- Funding level requested from the Bureau, total program cost, total cost-sharing from applicant and other sources—Scope and Goals
- Number and description of participants
- Wider audience benefiting from program (overall impact)
- Anticipated results (short and long-term)

7.4 Narrative (Tab C)

In 20 double-spaced, single-sided pages, provide a detailed description of the project addressing the areas listed below.

- Statement of need, objectives, goals, and benefits

Provide a well-defined, overarching vision of the program and a description of the steps/activities to be undertaken to create from the various components a well integrated whole. The rationale, goals and objectives articulated in the RFGP should be the foundation upon which the program proposal is built.

In keeping with the Bureau's goal of establishing long-term academic partnerships, the program should be crafted as part of a potential continuum of academic exchange opportunities that build upon and complement one another. The program should be seen as mutually beneficial to participants and program implementers, although the benefits may differ significantly.

- The host institution's qualifications in education administration and African school systems and relevance of past experience to this program.
- Implementation Approach and Strategy

The narrative should include a clear description of the general strategy and specific approach proposed to implement the program. As much as possible the program should be participant-focused incorporating adult learner strategies and oriented toward authentic learning outcomes and capacity-building in relation to real-world problem-solving. The program should be geared more toward enhancing participants' skills and less on providing information and materials.

- Participating Organizations (if applicable)

Provide a brief description of any other entities that are to play significant roles in the performance of this contract and how they fit into implementation.

- Work plan/Time Frame

The program should be approximately 6 weeks in length and should begin and end between the dates of June 1, 2001 and September 30, 2001. The work plan should clearly identify the number of hours dedicated to the various program components.

- Academic Component

Provide a description of the specific learning activities undertaken to meet goals and objectives of the program.

- Cultural Component

Include a description of those activities not directly related to the academic component and geared toward providing an American experience for the participants. To the extent possible, cultural activities should complement the goals and objectives of the academic component but should not be limited to only those with academic significance. Program days in Washington, DC and other major U.S. city should be included here.

- Provide a description of housing, maintenance and logistics including health care provisions for participants.
- Participant monitoring

Include a plan for measuring participant performance and tracking the individual's progress in meeting learning objectives.

- Follow-on plan

Include a description of short-term, mid-term and long-term goals in continuing the partnership between the host institution and the participants beyond the provisions of the summer institute grant. Although additional Bureau support would not be available for the short-term goals, mid-term and long-term goals could be considered for additional funding.

- Program Evaluation

The evaluation plan should identify anticipated outcomes and performance requirements clearly related to program goals and activities and include procedures for ongoing monitoring and corrective action when necessary. The identification of best practices relating to project administration is also encouraged, as is the discussion of unforeseen difficulties.

- Program Calendar

Include all academic, cultural and administrative activities.

7.5 Budget Submission (Tab D)

The cost to the Bureau for the Summer Institute for Nigerian Educators for 25 participants should not exceed $200,000. The final budget may be adjusted to reflect the actual number of participants.

Note: Please review carefully Standard Budget Preparation guidelines in Proposal Submission Instructions in regard to a Summary Budget and a detailed Line-Item Budget and descriptions and limitations of each type of administration cost. Use notes where further explanation of line items is required to clarify how the figures were derived.

7.6 Supporting Documentation (Tab E)

- Letters of endorsement
- Resumes

All program staff resumes should be included in the submission. No resume should exceed two pages.

7.7 Standard Forms (Tab F)

- ''Additional Information'' Form
- Copy of IRS notification of current tax-exempt status
- Four Required Certification Forms
- Certification of Compliance with Federal Forms
- Other attachments, if applicable

8. Review Process and Criteria

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals are reviewed for adherence to legal and budgetary requirements by Bureau offices responsible for these functions. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein. For program content, cost-effectiveness, and other criteria spelled out in the RFGP, the review is conducted by an advisory, assistance award-review panel composed of Bureau and Department officers. Additional officers, including

geographic area personnel, also review proposals for feasibility as well as potential for short- and long-term impact. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with a Bureau Grants Officer. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

8.1 Quality of Program Conceptualization and Planning

Proposals should exhibit substance, precision, and relevance to the Bureau's mission as well as adherence to all guidelines and objectives described in the RFGP. Proposals should provide a clear description of the general strategy and specific approach to implement the program. Proposals should also demonstrate effective use of community and regional resources to enhance both the educational and cultural experiences of the participants. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity.

8.2 Ability to Achieve Program Objectives

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

8.3 Area Expertise

Proposals should demonstrate significant institutional and staff experience in and knowledge of Africa as well as expertise in education in developing countries.

8.4 Multiplier Effect/Impact

Proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. To ensure that Bureau supported programs are not isolated events, a detailed post-institute plan (that does not require Bureau support) for follow-on activities that promote continued communication/involvement and build upon program achievements between the host institution and participants and/or the institutions they represent, should be incorporated into the proposal.

8.5 Program Monitoring/Evaluation

Proposals should include a plan to monitor program and participant progress through the course of the program and evaluate the overall success upon completion of the program. The Bureau recommends that the proposal include a participant needs assessment or other technique plus description of a methodology to link outcomes to original project objectives.

8.6 Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in both the American and African context. Program administrators should strive for diversity among Institute staff, student assistants, and host community contacts. Cultural, ethnic, and religious diversity of the participants should also be a consideration in program planning.

8.7 Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic and cultural program. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8.8 Cost-effectiveness

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 30, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–31075 Filed 12–6–00; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3492]

Bureau of Educational and Cultural Affairs; Project in Curriculum Development and Faculty Training at the University of Pristina, Kosovo; Request for Grant Proposals

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support the development of programs of instruction and faculty training at the University of Pristina in one or both of the following two fields: (1) Business management and entrepreneurship; and (2) public administration. Organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals that address one or both of these objectives. The means for achieving these objectives may include mentoring, teaching, consultation, research, distance education, internship training, and professional outreach to public and private sector managers, entrepreneurs, and local government administrators in Kosovo.

Overview and Project Objectives: The project is designed to assist the University of Pristina to develop a modern program in business management education to facilitate the development of entrepreneurial and business activity in Kosovo. The project is also designed to enable the University of Pristina to develop a program of instruction in public administration to increase efficiency and accountability in the administration of the public sector in Kosovo. Applicants may submit proposals focusing on either, or both of the two disciplines.

In business management, proposals should emphasize practical strategies to assist the faculty to develop a new curriculum in business management focusing on accounting, finance, banking, entrepreneurship, and the role of women in business. In public administration, proposed activities should assist with curriculum design and faculty training in local government administration, taxation, financial management, land registry/ownership and property rights. The inclusion of organizational development and personnel management among proposed activities is also encouraged. Proposals should include an emphasis on providing practical training and hands-on experience in local government administration as well as techniques for drafting legislation. Proposals should explain how the public administration program will equip the University to

promote concepts of accountability and transparency in the administration of the public sector in Kosovo.

Bureau policy stipulates that awards to organizations with less than four years experience in conducting international exchanges are limited to $60,000. The Bureau anticipates awarding either two grants not to exceed $221,300 (one grant for each one of the two designated disciplines), or one grant not to exceed $442,600 to work in both disciplines. Funds will be awarded for a period up to two years to defray the costs of exchanges, to provide educational materials, and to increase library holdings and improve Internet connections. Up to 30% of the grant total may be used to defray the costs of project administration.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators, or graduate students for any appropriate combination of teaching, mentoring, internships, in-service training and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester or longer for participants from Kosovo are strongly encouraged and program activities must be tied to the goals and objectives of the program. The strategy may include intensive English language training for selected participants, whose prior knowledge of English may need to be refreshed.

If the proposed project would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described with details about the amounts and sources of external support. Previous projects should be described in the proposal, and the results of the evaluation of previous cooperative efforts should be summarized.

U.S. Institution and Participant Eligibility: In the United States, participation in the program is open to accredited two and four-year colleges and universities, including graduate schools, as well as to other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c). Applications from consortia or other combinations of U.S. colleges and universities are eligible. The lead U.S. organization in the consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

With the exception of an outside consultant reporting on the degree to which project objectives have been achieved, participants who are traveling under the Bureau's grant funds must be teachers, advanced graduate students, who are teaching or research assistants, or administrators from the participating institution(s). Advanced graduate students are eligible for Bureau-funded participation in this program only if they are working under the direction of an accompanying faculty participant.

Kosovo Institutional and Participant Eligibility: In Kosovo, the partner is the University of Pristina. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations concerned with issues in business development and/or public administration training in Kosovo. Foreign participants will be selected in consultation with the U.S. Office in Pristina and must be instructors at the University of Pristina, or persons preparing to become instructors at the University of Pristina, who are eligible to receive a J–1 visa.

Budget Guidelines: Applicants may submit a budget up to $221,300 for projects focusing on one discipline, or a budget up to $442,600 for projects focusing on both of them. Requests for amounts smaller than the maximum are eligible. Budget notes should carefully justify the amounts needed. There must be a summary budget as well as a breakdown reflecting the program and administrative budgets including unit costs. Applicants submitting a budget for the combined program must separate budgets for each sub-project. Cost-sharing will be considered an important indicator of institutional commitment. Please refer to the Solicitation Package for complete guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau of Educational and Cultural Affairs concerning this RFGP should reference the above title ''Project in Curriculum Development and Faculty Training at the University of Pristina'' and reference number ECA/A/S/U–01–04.

FOR FURTHER INFORMATION CONTACT: Contact the Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349, SA–44; U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone (202) 619–5289, fax: (202) 401–1433, e-mail: affiliation@pd.state.gov to request a Solicitation Package.

The Solicitation Package contains detailed award criteria, required application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the above reference number on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download A Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfgps. Please read all information before downloading.

Deadline of Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington DC time on Wednesday, March 14, 2001. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received on a later date will not be accepted. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate Program Dates: Grants should begin on or about August 1, 2001.

Duration: August 1, 2001–August 30, 2003.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Ref.: ECA/A/S/U–01–04, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

All copies should include the documents specified under Tabs A through E in the ''Project Objectives, Goals, and Implementation'' (POGI) section of the Solicitation Package. The documents under Tab F of the POGI should be submitted with the original application and with one of the ten copies.

Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' Sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will

transmit these files electronically to the U.S. Office in Pristina for its review, with the goal of reducing time it takes to get the post's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the U.S. Office in Pristina. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: State Department officers in Washington, DC and overseas will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered or weighted.

1. Quality of the Program Idea: Proposals should exhibit originality, substance, precision, and resourcefulness. Proposals should exhibit sensitivity to the region, and have reasonable and feasible project objectives that are relevant to the needs of the University of Pristina. Proposals should describe projected benefits to the institutions involved as well as to wider communities of educators and practitioners in Kosovo.

2. Program Planning: Proposals should include creative, realistic and feasible program plans to achieve project objectives and a detailed schedule, which should include a well-reasoned combination of useful and appropriate mentoring, teaching training and methodology workshops, and outreach activities supporting the project objectives.

3. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives and how these issues will be addressed during project implementation. Proposals should also outline the institutional profile of each participating institution with regard to issues of diversity.

4. Institutional Capacity and Commitment: Proposals should demonstrate significant understanding of the institutional needs and capacities at the University of Pristina as well as the U.S. institution's capacities, and should demonstrate a strong commitment, during and after the period of the grant activity, to on-going cooperation. Relevant factors include: The match between participating organizations or departments, and availability of sufficient number of faculty and/or administrators willing and able to participate in project activities. Proposals should demonstrate the promise of sustainability and long-term impact, as reflected in a plan for follow-on activities.

5. *Institutional Record/Ability:* Proposals should demonstrate an institutional record of administering successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the State Department's contracts officers. The Bureau will consider the past performance of prior award recipients and the demonstrated potential of new applicants. Reviewers will also consider the quality of exchange participants' academic credentials, skills, commitment and experience relative to the goals and activities of the project plan.

6. *Project Evaluation:* The proposal should outline a methodology to assess progress toward the achievement of project goals. The final evaluation should include an external component and observations about anticipated long-term impact on business conditions and/or public sector administration in Kosovo.

7. *Cost-Effectiveness:* Administrative and program costs should be reasonable and appropriate with cost sharing provided as a reflection of the applicant's commitment to the pursuit of project objectives.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Support for East European Democracy (SEED) Act of 1989.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Projects must conform with Bureau requirements and guidelines outlined in the solicitation package. The POGI, a document describing this project's objectives, goals, and implementation, is included in the solicitation package.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 29, 2000.

William B. Bader,

Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–31077 Filed 12–6–00; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Services (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Services will hold a meeting on December 12, 2000, from 9 a.m. to 12 noon. The meeting will be opened to the public from 9 a.m. to 10 a.m., and closed to the public from 10 a.m. to 12 noon.

DATES: The meeting is scheduled for December 12, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, Conference Room 1414, located at 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Holderman, (202) 482–0345, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (principal contact), or Dominic Bianchi, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the ''Status Report on WTO General Agreement on Trade in Services (GATS) Work Program and Preparation for Future GATS Negotiating Meetings'' will be discussed.

Dominic Bianchi,

Acting Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–31141 Filed 12–6–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on September 19, 2000, at 65 FR 56609. No comments were received.

DATES: Comments must be submitted on or before January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas M.P. Christensen, Office of National Security Plans, Maritime Administration, MAR–620, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5990 or FAX 202–488–0941. Copies of this collection can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Voluntary Tanker Agreement.

OMB Control Number: OMB 2133–0505.

Type of Request: Extension of currently approved collection.

Affected Public: The respondents are tanker companies that operate in international trade and who have agreed to participate in this agreement.

Form (S): None.

Abstract: The collection consists of a request from MARAD that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered, or contracted for by the participant, and their size and flags of registry. There is no prescribed format for this information.

Annual Estimated Burden Hours: One hour per respondent.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, D.C. 20503, Attention MARAD Desk Officer.

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 information collection; (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 the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on December 4, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–31221 Filed 12–6–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket 98–4957 Notice 23]

Extension of Existing Information Collection: Public Comment Request and OMB Approval

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

ACTION: Request for Public Comment and OMB Approval.

SUMMARY: This is the second notice of requests for public participation in the Office of Management and Budget (OMB) approval process for extension of an existing Research and Special Programs Administration (RSPA) collection of information. RSPA is requesting OMB approval of information collection 2137–0596, National Pipeline Mapping System (NPMS) under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320. RSPA published its first request in the **Federal Register** on September 7, 2000 (65 FR 54336). The Paperwork Reduction Act gives the public a second chance to provide comments on information collection requests.

DATES: Comments on this notice must be received by January 8, 2001 to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments directly to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503 Attn: Desk Officer for DOT. Please identify the docket and notice numbers shown in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Pipeline Mapping System.

Type of Request: Extension of existing information collection.

Abstract: RSPA's Office of Pipeline Safety (OPS), along with state agencies, has been working with natural gas and hazardous liquid pipeline operators to develop NPMS. When complete, this system will depict and provide data on all natural gas transmission and hazardous liquid pipeline systems operating in the United States. OPS is extending its volunteer pilot program to all regulated transmission operators. OPS will be compensating the states and regional repositories for their startup and operating costs. Four commenters, three hazardous gas pipeline operators and one trade association provided comments. The following is a summary of their comments and OPS's response to their concerns.

OPS has worked with the pipeline industry since November 1994 on the development of a voluntary NPMS. This process has included two government/industry mapping teams who worked together to identify the most cost effective way for the pipeline industry to share data with OPS and the states. Additionally OPS has conducted four mapping workshops. OPS has made every effort to develop its voluntary mapping system which is flexible offering the opportunity for either hard copy or digital submissions from operators.

NPMS is important for regulatory oversight by both the states and the Federal government. Additionally, it is essential for the public's right-to-know. A few commenters questioned OPS' estimates of the time required to provide mapping data. OPS has revised upwards its initial estimate of 20 hours per operator to 30 hours. OPS notes that a commentor suggested that the required estimate could be up to 5,200 hours. OPS believes that this represents operators converting from hand drawn maps to digital mapping. This is not what is being requested by OPS. OPS is accepting hand drawn maps.

Some commenters questioned the need for a NPMS. One purpose for NPMS is to standardize the maps and reduce the burdens of operators responding to different requests from state officials.

Some commenters had concerns with the definition of transmission lines. This is outside the scope of this information collection.

One commenter questioned the accuracy goal of ±500 feet. OPS believes that the data submitted is much more accurate than this goal. The accuracy level is generally from 40–100 feet.

One commenter had concerns about the security of providing pipeline mapping. OPS believes that the limited pipeline data provided OPS does not pose a security threat.

Estimate of Burden: 30 hours per operator.

Respondents: Gas transmission and hazardous liquid operators.

Estimated Number of Respondents: 1350.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 40,500 hours.

This document can be reviewed between 10 a.m.–5 p.m. Monday through Friday, except Federal holidays, at the Dockets Facility, DOT, Room PL–401, 400 Seventh St., SW., Washington, DC 20590.

Comments are invited on: (a) The need for the proposed collection of information 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on December 1, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–31225 Filed 12–6–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Docket RSPA–98–4957; Notice 24 Notice of Request To Extend Existing Information Collection

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for public comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is publishing its intention to combine two existing information collections into one. OPS is combining Management Information System (MIS) Standardized Data Collection and Reporting of Drug Testing Materials (2137–0579) and Alcohol Testing (2137–0587). The purpose of this notice is to allow the public to comment. The combined information collection will be titled Drug and Alcohol Testing (2137–0579).

OPS believes that alcohol and drug testing requirements are an important tool for operators to monitor drug and alcohol usage in the industry. OPS has found that drug and alcohol use in the pipeline industry is less than 1% of employees.

DATES: Comments on this notice must be received by February 5, 2001 to be assured of consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957, and be mailed to Dockets Facility, Plaza 401, U.S. Department of Transportation (DOT), 400 Seventh Street, SW., Washington, DC 20590 or by e-mail to *http://dms.dot.gov*

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, DOT, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6205 or by electronic mail at *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Drug and Alcohol Testing.

OMB Number: 2137–0579.

Type of Request: Extension of an existing information collection.

Abstract: Drug and alcohol abuse is a major societal problem and it is reasonable to assume the problem exists in the pipeline industry as it does in society as a whole. The potential harmful effect of drug and alcohol abuse on safe pipeline operations warrants imposing comprehensive testing regulations on the pipeline industry. These rules are found in 49 CFR 199. These regulations require annual information collection of the results.

DOT is rewriting its drug and alcohol testing regulations in 49 CFR Part 40. As a result, the bulk of the burden hours that were accounted for by the modes will now be accounted for in a new information collection issued by DOT.

OPS is using this opportunity to combine its information collections for drug and alcohol testing information collections.

Respondents: Pipeline operators.

Estimated Number of Respondents: 2,419.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 2,963 hours.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, DOT, 400 Seventh Street, SW., Washington, DC 20590 from 9:00 a.m. to 5:00 p.m. Monday through Friday except Federal holidays. They also can be viewed over the Internet at *http://dms.dot.gov*

Comments are invited on: (a) The need for the proposed collection of information 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on December 1, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–31226 Filed 12–6–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33964]

V and S Railway, Inc.—Acquisition and Operation Exemption—Central Kansas Railway, L.L.C.

V and S Railway, Inc. (V&S), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and to operate the Medicine Lodge Subdivision (line) of Central Kansas Railway, L.L.C. The line extends between milepost 0+1016′, in Attica, and the end of the line at milepost 41.0, in Sun City, serving the intermediate points of Sharon, Medicine Lodge, and Lake City, a distance of approximately 41 miles in Harper and Barber Counties, KS.

The transaction was scheduled to be consummated on or after November 28, 2000.

This transaction is related to STB Finance Docket No. 33965, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—V and S Railway, Inc.,* wherein Kern W. Schumacher and Morris H. Kulmer have concurrently filed a verified notice to continue in control of V&S upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33964, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30943 Filed 12–6–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33953]

County of Coahoma, MS—Acquisition Exemption—Line of Illinois Central Railroad Company

The County of Coahoma, Mississippi (Coahoma), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire approximately 32.46 miles of rail line known as the Swan Lake Line from Illinois Central Railroad Company (IC) extending between milepost L–74.00 at Lyon, MS, and milepost L–79.00 at Clarksdale, MS, and between milepost 104.00 at Swan Lake, MS, to the connection with the Lyon-Clarksdale line at Clarksdale near milepost 76.54. The line is currently operated by Mississippi Delta Railroad (MSD), an affiliate of Gulf & Ohio Railways, Inc. (G&O), a noncarrier.[1] In addition, Coahoma will acquire approximately 1.39 miles of incidental trackage rights over IC's line from milepost 104.00 to the connection with IC's main line at milepost 105.39 so that the operator of the Swan Lake Line can reach IC's main line and conduct interchange at Swan Lake. Coahoma certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

The transaction was expected to be consummated on or shortly after November 16, 2000.

Coahoma states that, following consummation of this transaction, MSD is expected to continue operations until July 1, 2001. Coahoma further states that, if MSD should discontinue operations, it would be replaced by another rail operator, and that it is also possible that MSD and Coahoma could reach an agreement under which MSD would continue to operate the line after July 1, 2001. According to Coahoma, it will seek the Board's approval for any authority needed in connection with MSD's discontinuance of operations or a replacement operator's commencement of operations.[2]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33953, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William C. Sippel, Esq., Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, IL 60601–6721.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 30, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31230 Filed 12–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Gulf & Ohio Railways, Inc.—Exemption Form 49 U.S.C. 11301, 10901 and 11322*, Finance Docket No. 30683 (ICC served Nov. 6, 1985), wherein G&O leased a line of railroad from IC.

[2] MSD operates a contiguous rial line owned by G&O from milepost 55.40 at Lulu, MS, to milespost 74.00 at Lyon, MS, which connects to the Swan Lake Line. *See* Finance Docket No. 30683. G&O and Coahoma are currently negotiating the potential sale of this rail line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33965]

Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—V and S Railway, Inc.

Kern W. Schumacher and Morris H. Kulmer, individuals (collectively applicants), have filed a verified notice of exemption to continue in control of the V and S Railway, Inc. (V&S), upon V&S's becoming a Class III railroad.

The transaction was scheduled to be consummated on or after November 28, 2000.

This transaction is related to STB Finance Docket No. 33964, *V and S Railway, Inc.—Acquisition and Operation Exemption—Central Kansas Railway, L.L.C.,* wherein V&S seeks to acquire a line of railroad approximately 41 miles long in Harper and Barber Counties, KS.

Applicants currently indirectly control two existing Class III railroads: Tulare Valley Railroad Company, operating in the State of California; and Kern Valley Railroad Company, operating in the State of Colorado.[1]

Applicants state that (i) the rail line of V&S will not connect with any other lines of railroads under their control or within their corporate family, (ii) the transaction is not part of a series of transactions that would connect the railroads with each other or any railroad in applicants' corporate family, and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33965, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30942 Filed 12–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Kern Valley Railroad Company's acquisition and operation of a line of railroad in Colorado was previously exempted by the Board in *Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc.,* STB Finance Docket No. 33956 (STB served Nov. 21, 2000). That line of railroad is the subject of a notice of exemption for abandonment in *Trinidad Railway, Inc.—Abandonment Exemption—in Las Animas County, CO,* STB Docket No. AB–573X (STB served Sept. 21, 2000). On November 28, 2000, the Rails to Trails Conservancy filed a petition to revoke the exemption in STB Finance Docket No. 33956 and in the alternative a petition to dismiss the notice of exemption in STB Docket No. AB–573X.

Federal Register

Thursday,
December 7, 2000

Part II

Environmental Protection Agency

40 CFR Parts 9, 141, and 142
National Primary Drinking Water Regulations; Radionuclides; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[FRL–6909–3]

RIN 2040–AC98

National Primary Drinking Water Regulations; Radionuclides; Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today, EPA is finalizing maximum contaminant level goals (MCLGs), maximum contaminant levels (MCLs), and monitoring, reporting, and public notification requirements for radionuclides. Today's rule is only applicable to community water systems. Today's rule includes requirements for uranium, which is not currently regulated, and revisions to the monitoring requirements for combined radium-226 and radium-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. Based on an improved understanding of the risks associated with radionuclides in drinking water, the current MCL for combined radium-226/-228 and the current MCL for gross alpha particle radioactivity will be retained. Based on the need for further evaluation of the various risk management issues associated with the MCL for beta particle and photon radioactivity and the flexibility to review and modify standards under the Safe Drinking Water Act (SDWA), the current MCL for beta particle and photon radioactivity will be retained in this final rule, but will be further reviewed in the near future.

Some parts of EPA's 1991 proposal, including the addition of MCLGs and the National Primary Drinking Water Regulation (NPDWR) for uranium, are required under the SDWA. Other portions were intended to make the radionuclides NPDWRs more consistent with other NPDWRs, *e.g.,* revisions to monitoring frequencies and the point of compliance. Lastly, some portions were contingent upon 1991 risk analyses, *e.g.,* MCL revisions to the 1976 MCLs for combined radium-226 and -228, gross alpha particle radioactivity, and beta particle and photon radioactivity. The portions required under SDWA and the portions intended to make the radionuclides NPDWRs more consistent with other NPDWRs are being finalized today. The portions contingent upon the outdated risk analyses supporting the 1991 proposal are not being finalized today, in part based on updated risk analyses.

DATES: This regulation is effective December 8, 2003. The incorporation by reference of the publications listed in today's rule is approved by the Director of the Federal Register as of December 8, 2003. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Time on December 7, 2000.

ADDRESSES: The record for this regulation has been established under the docket name: National Primary Drinking Water Regulations for Radionuclides (W–00–12). The record includes public comments, applicable **Federal Register** notices, other major supporting documents, and a copy of the index to the public docket. The record is available for inspection from 9 a.m. to 4 p.m., Eastern Standard Time, Monday through Friday, excluding Federal holidays, at the Water Docket, 401 M Street SW, East Tower Basement (Room EB 57), Washington, DC 20460. For access to the Docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact David Huber, Standards and Risk Management Division, Office of Ground Water and Drinking Water, EPA (MC–4607), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 260–9566. For general inquiries, the Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time. The Safe Drinking Water Hotline toll free number is (800) 426–4791.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this rule are public water systems that are classified as community water systems (CWSs). Community water systems provide water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serve an average of at least 25 people year-round. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Privately-owned community water systems.
State, Tribal, Local, and Federal Governments.	Publicly-owned community water systems.

This table is not intended to be exhaustive, but rather, provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.26(a)(1)(i), 141.26(a)(1)(ii), 141.26(b)(1), and 141.26(b)(2) of this rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations and Acronyms Used in This Document

ASTM: American Society for Testing and Materials
AWWA: American Water Works Association
BAT: Best available treatment
BEIR: Biological effects of ionizing radiation
CFR: Code of Federal Regulations
CWS: Community water systems
EDE: Effective dose equivalent
EML: Environmental Measurements Laboratory
FR: Federal Register
ICRP: International Commission on Radiological Protection
IE: Ion exchange
kg: Kilogram
L/day: Liter per day
LET: Low energy transfer
LOAEL: Lowest observed adverse effect level
MCL: Maximum contaminant level
MCLG: Maximum contaminant level goal
mg/L: Milligram per liter
µg/L: Microgram per liter
mGy: MilliGray
mrem: Millirem
mrem/yr: Millirem per year
NBS: National Bureau of Standards
NDWAC: National Drinking Water Advisory Committee
NIRS: National Inorganic and Radionuclide Survey
NIST: National Institute of Standards and Technology
NODA: Notice of Data Availability
NPDWRs: National Primary Drinking Water Regulations
NRC: National Research Council
NTIS: National Technical Information Service
NTNC: Non-transient, non-community
NTNCWS: Non-transient, non-community water systems
pCi: Picocurie
pCi/L: Picocurie per liter
PE: Performance evaluation
PNR: Public Notification Rule
POE: Point-of-entry
POU: Point-of-use
PQL: Practical quantitation level
PT: Performance testing
RADRISK: A computer code for radiation risk estimation
RfD: Reference dose
RO: Reverse osmosis
SM: Standard methods
SMF: Standardized monitoring framework
SSCTL: ''Small Systems Compliance Technology List''
SWTR: Surface Water Treatment Rule
TAW: Technical Advisory Workgroup
UCMR: Unregulated Contaminant Monitoring Rule

UNSCEAR: United Nations Scientific Committee on the Effects of Atomic Radiation
USDOE: United States Department of Energy
USEPA: United States Environmental Protection Agency
USGS: United States Geological Survey

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I. Background and Summary of the Final Rule

A. What Did EPA Propose in 1991?

In 1991, EPA proposed a number of changes and additions to the radionuclides NPDWRs. Among other things, EPA proposed to:

- Set a maximum contaminant level goal (MCLG) of zero for all radionuclides.
- Set a maximum contaminant level (MCL) of 20 µg/L or 30 pCi/L for uranium (with options of 5 pCi/L to 80 µg/L).
- Change the radium standard from a combined limit for radium-226 and 228 of 5 pCi/L to separate standards at 20 pCi/L.
- Remove radium-226 from the radionuclides included in the definition

of gross alpha, while keeping the gross alpha MCL at 15 pCi/L, since the proposed radium-226 MCL was greater than the gross alpha MCL.

• Change dose limit from critical organ dose (millirems) to ''weighted whole body dose'' (millirems-effective dose equivalent).

• Require community water systems which are determined by the State to be vulnerable or contaminated to monitor for beta particle and photon radioactivity, rather than at all surface water systems serving a population over 100,000 people (as under the current 1976 rule).

• Establish a monitoring framework more in line with the standardized monitoring framework used for other contaminants.

• Exclude compositing for beta particle and photon emitters.

• Include non-transient, non-community water systems (NTNCWSs) in the regulation.

• Require that each entry point to the distribution system be monitored to ensure that each household in the system received water protective at the MCL.

B. Why Did EPA Propose Changes to the Radionuclides Drinking Water Regulations in 1991?

In 1976, National Interim Primary Drinking Water Regulations were promulgated for radium-226 and -228, gross alpha particle radioactivity and beta particle and photon radioactivity. The health risk basis for the 1976 radionuclides MCLs was described in the recent radionuclides Notice of Data Availability (NODA), (65 FR 21575, April 21, 2000). The 1986 reauthorization of the Safe Drinking Water Act (SDWA) required EPA to promulgate MCLGs and National Primary Drinking Water Regulations (NPDWRs) for the above radionuclides, radon and uranium. Also in 1986, EPA published an Advance Notice of Proposed Rulemaking for the radionuclides NPDWRs (EPA 1986), which stated EPA's intent to accomplish this goal. In 1991, EPA proposed changes to the current radionuclides standards and new standards for radon and uranium. EPA determined that both combined radium-226 and -228 and uranium could be analytically quantified and treated to 5 pCi/L. However, EPA concluded that, given the much greater cost-effectiveness of reducing risk through radon water treatment relative to radium and uranium, the feasible levels were 20 pCi/L each for radium-226 and -228 and 20 μg/L (or 30 pCi/L) for uranium. Between 1986 and 1991, EPA made risk estimates based on then-current models and information, as described in the NODA (EPA 2000e) and its Technical Support Document (USEPA 2000h). The 1991 risk estimates [1] indicated that the proposed MCL changes would result in lifetime cancer risks within the risk range of 10^{-6} and 10^{-4} (one in one million to one in ten thousand) that EPA considers in establishing NPDWRs. The 1991 proposed uranium MCL was based on both kidney toxicity risk and cancer risk. All MCLGs for radionuclides were proposed as zero pCi/L, based on a linear no-threshold cancer risk model for ionizing radiation. A summary of the difference between the 1976 rule and the 1991 proposal are presented in Table I–1. The detailed differences between the 1976 rule and the 1991 proposal can be found in the record for this rulemaking (EPA 1976; 1986; 1991; 2000a).

TABLE I–1.—COMPARISON OF THE 1976 RULE, 1991 PROPOSAL, AND 2000 FINAL RULE

Provision	1976 rule (current rule)	1991 proposal	2000 final rule
Affected Systems	CWS	CWS + NTNC	CSW.
MCLG for all radionuclides.	No MCLG	MCLG of zero	MCLG of zero.
Radium MCL	Combined Ra-226 + Ra-228 MCL of 5pCi/L.	Ra-226 MCL of 20 pCi/L Ra-228 MCL of 20 pCi/L	Maintain current MCL based on the newly estimated risk level associated with the 1991 proposed MCL.
Beta/Photon Radioactivity MCL.	• ≤ 4 mrem/y to the total body or any given internal organ • Except for H-3 and Sr-90, derived radionucide-specific activity concentrations yielding 4 mrem/y based on NSB Handbood 69 and 2L/d • H-3 = 20,000 pCi/L; Sr-90 = 8 pCi/L • Total dose from co-occurring beta/photon emitters must be ≤ 4 mrem/y to the total body of any internal organ	• 4 mrem/y effective dose equivalent (ede) • Re-derived radionuclide-specific activity concentrations yielding 4 mrem/y ede based on EPA RADRISK code and 2 L/d • Total dose from co-occurring beta/photon emitters must be < 4 mrem/y ede	Maintain current MCL based on the newly estimated risk level associated with the 1991 proposed MCL. This MCL will be reviewed within 2 to 3 years based on a need for further re-evaluation of risk management issues.
Gross alpha MCL	15 pCi/L excluding U and Rn, but including Ra-226.	''Adjusted'' gross aplha MCL of 15 pCi/L, excluding Ra-226, radon, and uranium.	Maintain current MCL based on the newly estimated risk level associated with the 1991 proposed MCL.
Polonium-210	Included in gross alpha	Included in gross alpha	Included under gross alpha, as in current rule. Monitoring required under the UCMR rule. Further action may be proposed at a later date.
Lead-210	Not Regulated	Included in beta particle and photon radioactivity; concentration limit proposed at 1 pCi/L.	No changes to current rule. Monitoring required under the UCMR rule. Further action may be proposed at a later date.
Uranium MCL	Not Regulated	20 g/L or 30 pCi/L w/ option for 5 pCi/L–80 g/L.	30 μ/L.

[1] The 1991 cancer risk estimates were based on the now-outdated RADRISK model (see the NODA and its Technical Support Document, USEPA 2000e and h).

TABLE I–1.—COMPARISON OF THE 1976 RULE, 1991 PROPOSAL, AND 2000 FINAL RULE—Continued

Provision	1976 rule (current rule)	1991 proposal	2000 final rule
Ra-224	Part of gross alpha, but sample holding time too long to capture Ra-224.	Part of gross alpha, but sample holding time too long to capture Ra-224.	No changes to current gross alpha rule. Will collect national occurrence information; further action may be proposed at a later date.
Radium monitoring	Ra-226 linked to Ra-228; measure Ra-228 if Ra-226 > 3 pCi/L and sum.	Measure Ra-226 and -228 separately	Measure Ra-226 and -228 separately.
Monitoring baseline	4 quarterly measurements. Monitoring reduction based on results: > 50% of MCL required 4 samples every 4 yrs; < 50% of MCL reguired 1 sample every 4 yrs	Annual samples for 3 years; Std Monitoring Framework: > 50% of MCL required 1 sample every 3 years; < 50% of MCL enabled system to apply for waiver to 1 sample every 9 years.	Implement Std Monitoring Framework as proposed in 1991. Four initial consecutive quarterly samples in first cycle. If initial average level > 50% of MCL: 1 sample every 3 years; < 50% of MCL: 1 sample every 6 years; Non-detect: 1 sample every 9 years. (beta particle and photon radioactivity has a unique schedule—see section III, part—K) States will have discretion in data grandfathering for establishing initial monitoring baseline.
Beta particle and photon emitters monitoring.	Surface water systems > 100,000 population Screen at 50 pCi/L/; vulnerable systems screen at 15 pCi/L.	Ground and surface water systems within 15 miles of source screen at 30 or 50 pCi/K.	CWSs determined to be vulnerable by the State screen at 50 pCi/L.
Gross alpha monitoring.	Analyze up to one year later	Six month holding time for gross alpha samples; Annual compositing of samples allowed.	As proposed in 1991.
Analytical Methods	Provide methods	Method updates proposed in 1991; Current methods were updated in 1997.	Current methods with clarifications.

C. What New Information Has Become Available Since 1991? Overview of the 2000 Notice of Data Availability (NODA)

EPA published a Notice of Data Availability (NODA) on April 21, 2000. This NODA described the new information that has become available since the 1991 proposal and the basis for today's final regulatory decisions. The most significant source of new information is Federal Guidance Report-13 (FGR–13) (USEPA 1999b), ''Cancer Risk Coefficients for Environmental Exposure to Radionuclides,'' which provides the numerical factors used in estimating cancer risks from low-level exposures to radionuclides. The risk coefficients in FGR–13 are based on state-of-the-art methods and models and are a significant improvement over the risk coefficients that supported the 1991 radionuclides proposal. FGR–13 is the latest report in a series of Federal guidance documents that are intended to provide Federal and State agencies technical information to assist their implementation of radiation protection programs. FGR–13 was formally reviewed by EPA's Science Advisory Board and was peer-reviewed by academic and government radiation experts. An interim version of the report was published for public comment in January of 1998. Comments were provided by Federal Agencies, including the Nuclear Regulatory Commission and the Department of Energy, State Agencies, and the public. The final version (September 1999) reflects consideration of all of these comments. The risk analyses supporting today's regulatory decisions are described in detail in the NODA (EPA 2000e) and its Technical Support Document (USEPA 2000h).

The NODA also reported the results from a June 1998 USEPA workshop held to discuss non-cancer toxicity issues associated with exposure to uranium from drinking water. At this workshop, a panel of experts reviewed and evaluated new information regarding kidney toxicity was examined. The findings from this workshop can be found in the NODA's Technical Support Document (USEPA 2000h).

Other important new information includes the results from a 1998 U.S. Geological Survey study which targeted the occurrence of radium-224 and beta particle/photon radioactivity (USEPA 2000e and h). Previously, it was assumed that the alpha-emitting radium-224 isotope rarely occurred in drinking water. If present in drinking water, because of its short half-life (3.6 days) and estimated low occurrence, it was thought that sufficient time would elapse to allow the isotope to decay to low levels before entry into the distribution system. Hence, radium-224 was not thought to appreciably occur in drinking water. This new information indicates that radium-224 significantly (positively) correlates with both radium-228 (correlation coefficient of 0.82) and radium-226 (correlation coefficient of 0.69), suggesting that radium-224 should be evaluated as a potential drinking water contaminant of national concern (USEPA 2000h). The impact of this and other information on decisions regarding radium-224 is discussed in part D of this section. In addition to the radium-224 occurrence information, the USGS study also determined that the majority of the beta particle/photon radioactivity in the samples collected was due to the presence of radium-228 and potassium-40, both naturally occurring contaminants. Since radium-228 is regulated under the combined radium-226/-228 standard and potassium-40 is not regulated, this suggests that most situations in which the beta/photon screening level is exceeded will not result in MCL violations. Of more concern, minor contributions from naturally occurring lead-210 were also reported. Lead-210 occurrence will be studied under the Unregulated Contaminant Monitoring Rule (UCMR).

In addition to this new technical information, the NODA also described the 1996 changes to the statutory framework for setting drinking water NPDWRs. The SDWA, as amended in 1996, requires EPA to review and revise,

as appropriate, each national drinking water regulation at least once every six years. The Act also requires that any revision to an NPDWR ''maintain, or provide for greater, protection of the health of persons'' (section 1412(b)(9)).

Regarding the setting of new NPDWRs, the SDWA as amended in 1996 gives EPA the flexibility to set an MCL at a level less stringent than the feasible level, if the Administrator determines that the benefits do not justify the costs at the feasible level. If the Administrator makes this finding, the Act directs EPA to set the MCL at a level that ''maximizes health risk reduction benefits at a cost that is justified by the benefits'' (section 1412(b)(6)). This provision applies to uranium only, since it is the only contaminant for which a new MCL is being established by today's regulatory action.

D. What Are the Rationales for the Regulatory Decisions Being Promulgated Today?

As previously discussed, EPA is retaining the current MCLs for combined radium-226 and 228, gross alpha particle radioactivity, and beta particle and photon radioactivity and is promulgating a new standard for uranium. The following is a discussion of the rationales supporting these decisions. In addition to the responses to major comments in the following section, responses to each individual comment are in the comment response document which is available for review in the docket for this final rule.

1. Retaining the Combined Radium-226 and Radium-228 MCL

The 1991 proposed changes to the MCLs for combined radium-226 and radium-228 were premised on a cost-effectiveness trade-off between radium mitigation and radon mitigation (a radon standard was also included in the 1991 proposal). This cost-effectiveness argument was used to support a proposal to raise the combined radium-226/-228 MCL of 5 pCi/L to individual MCLs of 20 pCi/L for each isotope. At the time, it was thought that the risks associated with 20 pCi/L of radium-226 and radium-228 were within the 10^{-6} to 10^{-4} risk range. However, current risk analyses based on Federal Guidance Report-13 (see Part C of this section) indicate that these higher MCLs have associated risks that are well above the 10^{-6} to 10^{-4} risk range. For details on the basis and findings of this risk analysis, see the NODA (USEPA 2000e) and its Technical Support Document (USEPA 2000h). Since this proposed change would introduce higher risks than envisioned in the original 1976 rule, approaching lifetime cancer risks of one in one thousand (10^{-3}) for occurrence at or near the 1991 proposed MCLs, EPA believes that its decision to retain the current combined radium-226/-228 MCL of 5 pCi/L is justified. Under the 1996 Amendments to the Safe Drinking Water Act, EPA is required to ensure that any revision to a drinking water regulation maintains or provides for greater protection of the health of persons (section 1412(b)(9)).

a. Major Comments Regarding Retention of the Combined Radium-226 and Radium-228 MCL

The major comments and responses concerning the retention of the combined radium-226 and radium-228 MCL are summarized in part E of this section (''What are the health effects that may result from exposure to radionuclides in drinking water?'').

2. The Final Uranium MCL

a. What Is the Final MCL for Uranium and the Rationale for That Regulatory Level?

With today's rule, EPA is promulgating a uranium MCL of 30 μg/L. The SDWA generally requires that EPA set the MCL for each contaminant as close as feasible to the MCLG, based on available technology and taking costs to large systems into account. The 1996 amendments to the SDWA added the requirement that the Administrator determine whether or not the quantifiable and non-quantifiable benefits of an MCL justify the quantifiable and non-quantifiable costs based on the Health Risk Reduction and Cost Analysis (HRRCA) required under section 1412(b)(3)(C). The 1996 SDWA amendments also provided new discretionary authority for the Administrator to set an MCL that is less stringent than the feasible level if the benefits of an MCL set at the feasible level would not justify the costs (section 1412(b)(6)). This final rule establishing an MCL for uranium of 30 μg/L is the first time EPA has invoked this new authority.

In conducting this analysis, EPA considered all available scientific information concerning the health effects of uranium, including various uncertainties in the interpretation of the results, as well as all costs and benefits, both quantifiable and non-quantifiable. As discussed in more detail below, all health endpoints of concern were considered in this analysis. For some of these, the risk can currently be quantified (*i.e.,* expressed in numerical terms); and for some, it cannot. Similarly, there are a variety of health and other benefits attributable to reductions in levels of uranium in drinking water, some of which can be monetized (*i.e.,* expressed in monetary terms) and others that cannot yet be monetized. All were considered in this analysis. A detailed discussion of each of the principal factors considered follows.

b. MCLG and Feasible Level for Uranium

Since uranium is radioactive and EPA uses a non-threshold linear risk model for ionizing radiation, today's rule sets the MCLG (non-enforceable health-based goal) for this contaminant at zero. The Safe Drinking Water Act requires EPA to set the MCL as close to the MCLG as is feasible, where this is defined as ''feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration) * * * '' [section 1412(b)(4)(D)]. EPA proposed a feasible level of 20 μg/L in its 1991 proposal. In doing so, EPA determined that uranium may be treatable and quantifiable at levels below 20 μg/L, however, levels below 20 μg/L were not considered feasible under the Safe Drinking Water Act. EPA believes the feasible level is still 20 μg/L.

c. Basis for 1991 Proposed MCL and Cancer Risk from Uranium

EPA is required by the Safe Drinking Water Act (section 1412(b)(2)) to regulate uranium in drinking water. In 1991, EPA proposed a uranium MCL of 20 μg/L (''mass concentration'') based on health effects endpoints of kidney toxicity and carcinogenicity. In the proposal, EPA estimated that 20 μg/L would typically [2] correspond to 30 pCi/L (''activity''), based on an assumed mass:activity ratio of 1.5 pCi/μg. While such values are known to occur in ground water, this conversion factor does not reflect our ''best estimate'' today. The best estimate of a geometric average mass:activity ratio is 0.9 pCi/μg for values near the MCL, based on data from the National Inorganics and Radionuclides Survey (see USEPA 2000h). Given the closeness of this

[2] The actual relationship between mass concentration (μg/L) and activity (pCi/L) varies somewhat in drinking water sources, since the relative amounts of the radioactive isotopes that make up naturally occurring uranium (U–238, U–235, and U–234) vary between drinking water sources. The typical conversion factors that are observed in drinking water range from 0.67 up to 1.5 pCi/μg.

value to unity (1 pCi/μg), the available data suggests that, to a first approximation [3], the mass:activity ratio is 1:1 for typical systems. The 1991 proposed MCL of 20 μg/L was determined, at that time, to correspond to a ''drinking water equivalent level'' (DWEL [4]) with respect to kidney toxicity for a lifetime exposure. The corresponding 30 pCi/L level (based on the 1991 mass to activity conversion) was estimated to have a lifetime cancer risk of slightly below the 10^{-4} level.

Because the kidney toxicity health effects and the corresponding non-quantifiable kidney toxicity benefits are a very important consideration in setting the MCL, we first provide background on these effects before discussing the rationale for setting the uranium MCL.

d. Uranium Health Effects: Kidney Toxicity

Each kidney consists of over a million nephrons, the filtration functional units of the kidney. The nephron consists of glomeruli, which filter the blood, and renal tubules (proximal, distal, collecting duct, etc.), which collect the fluid that passes through the glomeruli (the ''filtrate''). After the filtrate flows into renal tubules, glucose, proteins, sodium, water, amino acids, and other essential substances are reabsorbed, while wastes and some fraction of electrolytes are left behind for later excretion. The efficiency of this process can be monitored by analyzing urine (''urinalysis''), which reveals the concentrations of the various constituents making up the urine. For example, protein or albumin in the urine (proteinuria or albuminuria) indicates reabsorption deficiency or leakage of albumin, a class of proteins found in blood and which are responsible for maintaining fluid balance between blood and body cells. In the case of uranium toxicity, it is not clear whether long-term exposure may lead to marked albumin loss.

The level of proteinuria in urine is an indication of the degree of kidney toxicity: levels are divided into ''trace'', ''mild'', ''moderate'', or ''marked'', which are defined by increasing levels of proteinuria. Increased excretion of protein in the urine could be the result of tubular damage, inflammation, or increased glomerular permeability. It should be noted that a gradual loss of nephrons is asymptomatic until the loss is well advanced; the kidneys normally have the ability to compensate for nephron-loss. For example, chronic renal failure occurs when there is around 60% nephron loss. During the gradual loss of functioning nephrons, the remaining nephrons appear to adapt, increasing their capacity for filtration, reabsorption, and excretion.

Uranium has been identified as a nephrotoxic metal (kidney toxicant), exerting its toxic effects by chemical action mostly in the proximal tubules in humans and animals. However, uranium is a less potent nephrotoxin than the classical nephrotoxic metals such as cadmium, lead, and mercury. Uranium has an affinity for renal proximal tubular cells and interferes with reabsorption of proteins, as previously described. Specifically, uranium-induced renal tubular dysfunction in humans is marked by mild proteinuria, due to reduced reabsorption in the proximal renal tubules. Furthermore, the pathogenesis of the kidney damage in short-term animal studies indicates that regeneration of the tubular cells may occur upon discontinuation of exposure to uranium. We do not know if uranium-induced proteinuria is an indicator of the beginning of an adverse effect or whether it is a reversible effect that does not typically result in kidney disease. Based on the uncertainty involved in the ultimate effects, the scientists at our experts workshop (discussed next) treated this effect as an indicator of an incipient change in kidney function that may lead ultimately to frank adverse effects such as breakdown of kidney tubular function. For general information on proteinuria, kidney function, and kidney disease, see the fact sheets at ''http://www.niddk.nih.gov/health/kidney/pubs/ proteinuria/proteinuria.htm'', ''http://www.niddk.nih.gov/health/kidney/pubs/yourkids/index.htm'', and ''http://www.niddk.nih.gov/health/kidney/kidney.htm'' (NIH 2000a, NIH 2000b, and NIH 2000c).

e. New Kidney Toxicity Analyses Announced in the NODA

Since the 1991 radionuclides proposal, EPA has re-evaluated the available kidney toxicity data and, based on the results of an experts workshop (see the NODA, USEPA 2000e, for details), has estimated the DWEL to be 20 μg/L. The DWEL is derived from the Reference Dose (RfD), which is an estimate of a daily ingestion exposure to the population, including sensitive subgroups, that is likely to be without an appreciable risk of deleterious effects during a lifetime. The RfD (in μg of uranium per kg of body mass per day; μg/kg/day) for uranium was calculated from the Lowest Observed Adverse Effects Level (''LOAEL''), which is the lowest level at which adverse effects were observed to occur. The LOAEL is taken directly from health effects data. The RfD is calculated by dividing the LOAEL by a numerical uncertainty factor which accounts for areas of variability in human populations because of uncertainty in the uranium health database. EPA followed the recommended methodology of the National Academy of Sciences in estimating the uncertainty factor.

As described in the NODA, we reported that our best-estimate of the LOAEL is 60 μg/kg/day, based on rat data. In support of this estimate of the DWEL, EPA has some human data which demonstrates that mild proteinuria has been observed at drinking water levels between 20 and 100 μg/L. In estimating the RfD, we have used an uncertainty factor of 100 (rounded from the product of 3 for intra-species variability, 10 for inter-species variability, and 3 for the use of a LOAEL). Using this uncertainty factor, the RfD is calculated to be 0.6 μg/kg/day. The estimated uncertainty in the RfD spans an order of magnitude (a factor of ten). The 20 μg/L DWEL is calculated by using this RfD and assuming that an adult with a body mass of 70 kilograms drinks 2 liters of water per day [5] and that 80% of exposure to uranium is from water. These calculations are described in more detail in the NODA's Technical Support Document (USEPA 2000h).

The Agency believes that 30 μg/L is protective against kidney toxicity. While 20 μg/L is the Agency's best estimate of the DWEL, there are several reasons, in the Agency's judgment, that demonstrate that there is not a predictable difference in health effects due to exposure between the DWEL of 20 μg/L and a level of 30 μg/L. For instance, variability in the normal range for proteinuria in humans is very large and there is additional variability in proteinuria levels observed at uranium

[3] This is mentioned since, for the sake of simplicity, the reader may thus easily convert between μg/L and pCi/L. However, in current calculations, we use the geometric mean from the NIRS data, which is 0.9 pCi/μg. We reiterate that conversion factors ranging from 0.67 up to 1.5 pCi/μg do occur in drinking water sources.

[4] The drinking water equivalent level (DWEL) (μg/L) is the best estimate of the drinking water concentration that results in the Reference Dose (μg/kg/day), assuming a water ingestion rate of 2 L/day and a body mass of 70 kg.

[5] The standard assumptions for the DWEL are conservative, since the ingestion rate is at the 90th percentile, while the body mass is more typical. Conservative assumptions are used to ensure that the resulting exposure level is protective of individuals that consume significantly more water than typical and children (low body masses).

exposures large enough to induce the effect. In the existing few epidemiology studies, each of which are based on small study populations, there were some persons exposed to over five times the DWEL of 20 µg/L without the observation of effects more serious than mild proteinuria (within the high end of the normal range). An MCL of 30 µg/L represents a relatively small increase over the DWEL compared to the over-all uncertainty in the RfD and the uncertainty in the importance of the mild proteinuria observed for uranium exposures from high drinking water levels (keeping in mind that, as discussed previously, the DWEL is based on the RfD and is an estimate of a no effect level for a population). While it is assumed that risk of an effect (here a mild effect) increases as exposure increases over the RfD, it is not known at what exposure an effect is likely. Given that the uncertainty factor of 100 provides a relatively wide margin of safety, the likelihood of any significant effect in the population at 30 µg/L is very small. EPA, thus, believes that the difference in kidney toxicity risk for exposures at 20 µg/L versus 30 µg/L is insignificant.

f. Costs and Benefits From Regulating Uranium in Drinking Water

As discussed in the NODA, EPA has estimated the risk reductions, monetized benefits, and costs associated with compliance with an MCL of 20 µg/L, 40 µg/L, and 80 µg/L. In the NODA, EPA solicited comment on using its statutory authority provided in section 1412(b)(6) of the Safe Drinking Water Act to set the uranium MCL at a level higher than the proposed level of 20 µg/L, based on its analysis of costs and benefits.

The monetized costs and benefits associated with various MCL options are discussed further in section IV of today's notice and in more detail in the economic analysis support document (USEPA 2000g). Table I–2 shows incremental annual cancer risk reductions, total national annual compliance costs and monetized benefits (excluding kidney toxicity benefits), and the numbers of community water systems predicted to have MCL violations for MCLs of 80, 30, and 20 µg/L (assuming the 0.9 pCi/µg conversion factor for estimating cancer risk reductions and benefits). Keeping in mind that the monetized benefits and risk reductions exclude kidney toxicity benefits, several things can be noted from the analysis. Focusing on the MCL change from 30 µg/L to 20 µg/L (see lower part of table I–2), one can see that the incremental benefits for implementing an MCL of 30 µg/L are three times greater than the incremental benefits for a lower MCL of 20 µg/L, while the incremental annual costs are much closer in magnitude ($54 million vs. $39 million). In terms of incremental cancer cases avoided, the estimated number of cancer cases avoided for an MCL of 30 µg/L is 0.8 annually, while lowering the MCL to 20 µg/L would result in an additional 0.2 cases avoided annually (25% reduction) at an additional cost of $39 million annually (75% increase). Approximately 37% of systems predicted to have MCL violations occur between 30 µg/L and 20 µg/L, resulting in significant increases in annual compliance costs (42% of national compliance costs occur between 30 µg/L and 20 µg/L), while the number of cancer cases avoided increases much less significantly (only 20% of cancer risk reduction occurs between 30 µg/L and 20 µg/L).

Since the kidney benefits are not quantified, this is an incomplete picture, but EPA believes that the uncertainties in the analysis of health effects are such that it is not known whether the risk of mild proteinuria are appreciably different between 20 µg/L and 30 µg/L. Assuming that there is a risk increase, it would be expected to be negligible compared to the risk increase that occurs between the highest uranium levels that occur in drinking water (*i.e.,* approximately 200 µg/L) and an MCL of 30 µg/L. Considering only cancer risk reduction benefits, the annual net benefits [6] for a uranium MCL of 20 µg/L are negative $90 million [7] and for an MCL of 30 µg/L are negative $50 million. Since the cancer risk reduction net benefits are higher at 30 µg/L than at 20 µg/L and the non-quantified kidney toxicity benefits are expected to be substantially the same at 20 µg/L and 30 µg/L, EPA believes an MCL of 30 µg/L maximizes the benefits at a cost justified by the benefits. EPA does not believe that uranium levels above 30 µg/L are protective of kidney toxicity with an acceptable margin of safety. (EPA believes that the margin of safety associated with a 30 µg/L are comparable with those at 20 µg/L.) Further, EPA believes that the net kidney toxicity benefits of an MCL greater than 30 µg/L would be less than those at 30 µg/L. Finally, EPA believes that 30 µg/L is protective of the general population, including children and the elderly.

TABLE I–2.—INCREMENTAL COSTS AND BENEFITS FOR URANIUM MCLS OF 80 µG/L, 30 µG/L, AND 20 µG/L

Uranium MCL	Exposure change	Incremental annual cancer cases avoided	Incremental annual compliance costs (in millions)	Incremental annual monetized cancer benefits (kidney benefits not monetized) (in millions)	Incremental number of community water systems impacted
80 µg/L	∞–80 µg/L	0.5	$16	$2	100
30 µg/L	80–30 µg/L	0.4	38	1	400
20 µg/L	30–20 µg/L	0.2	39	1	290
Incremental Costs and Benefits for Uranium MCLs of 30 µg/L (µg/L) and 20 µg/L only					
30 µg/L	∞–30 µg/L	0.8	54	3	500
20 µg/L	30–20 µg/L	0.2	39	1	290

Note: Numbers are rounded, so numbers resulting from addition and subtraction of the numbers shown may appear to yield incongruous results. However, the numbers shown are calculated using more significant figures and rounded after, which is the appropriate approach for numbers with large uncertainties.

[6] Not incremental net benefits, but net benefits: ''Benefits for an MCL in isolation''—''Cost of an MCL in isolation''.

[7] Annual net benefits for an MCL of 20 µg/L = $4 million—$93 million, which rounds to negative $90 million; annual net benefits for an MCL of 30 µg/L = $3 million—$54 million, which rounds to negative $50 million. See Table IV–1, ''Summary of Costs and Benefits for Community Water Systems Predicted to Be Impacted by the Regulatory Options Being Considered for Finalization'', in today's notice and the supporting Economic Analysis (USEPA 2000g) for more details.

g. Administrator's Decision To Promulgate MCL Higher Than Feasible Level

Based on the relatively modest annual cancer risk reductions and the expected modest kidney toxicity risk reductions between 30 μg/L and 20 μg/L (see Table I–2) and the high annual compliance costs for an MCL of 20 μg/L, the Administrator has determined that the benefits do not justify the costs at the feasible level. Furthermore, as previously described, the Administrator has determined that an MCL of 30 μg/L maximizes the health risk reduction benefits at a cost justified by the benefits. In summary, this finding is based on the fact that potential uranium MCLs lower than 30 μg/L have substantially higher associated compliance costs and only modest additional cancer risk reduction and kidney toxicity benefits. EPA has not selected a higher MCL for several reasons. Higher uranium MCLs would still incur implementation and monitoring costs, with benefits greatly diminished because uranium does not occur significantly at levels much higher than 30 μg/L. Additionally, EPA believes that a uranium MCL of 30 μg/L is appropriate since it is protective of kidney toxicity and cancer with an adequate margin of safety. We do not believe that MCL options higher than 30 μg/L afford a sufficient measure of protection against kidney toxicity.

Assuming a conversion factor of 0.9 pCi/μg, an MCL of 30 μg/L will typically correspond to 27 pCi/L, which has a lifetime radiogenic cancer risk of slightly less than one in ten thousand, within the Agency's target risk range of one in one million to one in ten thousand. EPA is aware that circumstances may exist in which more extreme conversion factors (> 1.5 pCi/μg) apply. EPA does not have extensive data on these ratios at local levels, but believes these higher ratios to be rare. In these rare circumstances, uranium activities in drinking water may exceed 40 pCi/L. Although these concentrations are still within EPA's target risk ceiling of 1×10^{-4}, EPA recommends that drinking water systems subject to extreme pCi/μg conversion factors mitigate uranium levels to 30 pCi/L or less, to provide greater assurance that adequate protection from cancer health effects is being afforded.

In today's final rule, the Administrator is exercising her authority to set an MCL at a level higher than feasible (section 1412(b)(6)), based on the finding that benefits do not justify the costs at the feasible level (20 μg/L) and that the net benefits are maximized at a level (30 μg/L) that is still protective of kidney toxicity and carcinogenicity with an adequate margin of safety. EPA believes that there are considerable non-quantifiable benefits associated with ensuring that kidney toxicity risks are minimized and has weighed these non-quantifiable benefits in its decision to exercise its discretionary authority under SDWA section 1412(b)(6).

In invoking the discretionary authority of section 1412(b)(6) to set an MCL level higher than feasible, the Agency is in compliance with the provisions of section 1412(b)(6)(B). This provision provides that the judgment with respect to when benefits of the regulation would justify the costs under subparagraph (6)(A) is to be made based on assessment of costs and benefits experienced by persons served by large systems and those other systems unlikely to receive small system variances (*e.g.* systems serving up to 10,000 persons). In effect, the costs to systems likely to receive a small system variance are not to be considered in judging the point at which benefits justify costs. Subparagraph (6)(B) also provides, however, that this adjusted assessment does not apply in the case of a contaminant found ''almost exclusively'' in ''small systems eligible'' for a small system variance. Because the contaminants addressed in today's rule are found almost exclusively in small systems and because the Agency has identified affordable treatment technologies for small systems that would need to comply with today's rule (*i.e.,* we do not contemplate granting small system variances), the Agency has not adjusted the proposed MCL pursuant to subparagraph (B).

h. California Drinking Water Regulation

Approximately one-third of the community water systems that are expected to be impacted by the uranium MCL are located in California. Thus, current and likely future practices of these systems is of particular interest. The State of California currently has a drinking water standard for uranium of 20 pCi/L (enforced as 35 μg/L), which it adopted in 1989. EPA has used comments and information from the State of California in considering its MCL for uranium. The California standard is based on the California Department of Health Services' 1989 estimate of the DWEL for kidney toxicity, 35 μg/L. While California has recently proposed revising its non-enforceable public health goal for uranium in drinking water, it is not currently known what the final estimate will be. In response to the NODA, representatives of the California Department of Health Services commented that at uranium levels of 35 μg/L, most of its small water systems were able to use alternate sources of water (new wells) as a means of complying with the standard, but that 20 μg/L would lead to many of these small systems having to install treatment, which, because of waste disposal issues (*i.e.,* inability to safely dispose of hazardous radioactive wastes), could lead to a significant number of small systems being unable to come into compliance through treatment. EPA believes that these comments lend support to the choice of an MCL of 30 μg/L as being both protective of kidney toxicity and a standard that allows for significant use of non-treatment options by small systems, reducing the need for dealing with radioactive waste handling and disposal.

i. Summary of Major Comments on the Uranium Options

(1) Costs and Benefits of Uranium MCLs of 20, 40, and 80 μg/L or pCi/L: Most commenters stated that the benefits of an MCL of 20 μg/L or pCi/L did not justify the costs and suggested that EPA should exercise its authority under SDWA section 1412(b)(6) to set an MCL higher than the feasible level. As discussed previously in this section, EPA agrees that the benefits of an MCL at 20 μg/L do not justify the costs and has exercised its SDWA authority by setting the uranium MCL at a level of 30 μg/L, a level at which EPA believes the benefits do justify the costs.

(2) The Calculation of the Safe Level for Uranium in Water: One commenter suggested that the use of 70 kg as the reference body mass with a ''90th percentile ingestion rate'' of 2 L/day will lead to a kidney toxicity DWEL that is more protective than the 90th percentile. EPA agrees that it is possible that 20 μg/L is more protective than the 90th percentile value for the general population. EPA has performed a preliminary Monte Carlo analysis of the safe level that replaces point estimates for consumption rate and body mass with distributions based on the available data. Based on this analysis the 90th percentile (for the general population) equivalent level could be as high as 30 μg/L.

(3) Compliance Options for Small Systems for an MCL of 20 μg/L or pCi/L: Several commenters stated that an MCL of 20 μg/L or pCi/L would force small systems to install water treatment, rather than allowing other compliance options like installing new wells or blending water. The commenters

suggested that an MCL of 20 μg/L or pCi/L would pose a significant hardship on small systems with little benefit, including significant costs and technical problems associated with waste disposal. Commenters also suggested that a higher MCL would allow a larger fraction of small systems to use compliance options other than treatment, most notably, new well installation. EPA agrees that a lower MCL does decrease the probability that some non-treatment options could be used, including new well installation and blending. EPA agrees that the benefits of the MCL of 20 μg/L or pCi/L do not justify the costs and thus has chosen a higher MCL. EPA also believes that an MCL of 30 μg/L should allow a greater fraction of small systems to use non-treatment options for compliance, avoiding waste disposal issues and excessive treatment costs.

(4) The Use of a Dual Standard for Uranium: Commenters suggested that the use of a dual standard for uranium to ensure protectiveness of both kidney toxicity and carcinogenicity, *i.e.,* one in μg/L and one in pCi/L, would be unnecessarily complicated, since it would require that both uranium isotopic analyses and mass analyses be performed by each water system. EPA agrees that a dual standard would be unnecessarily complicated and has chosen a single standard expressed in μg/L that is protective of both kidney toxicity and carcinogenicity.

3. Retaining Beta Particle and Photon Radioactivity MCL

With today's rule, EPA is retaining the existing MCL for beta and photon emitters and the methodology for deriving concentration limits for individual beta and photon emitters that is incorporated by reference. The concentrations for these contaminants were derived from a dosimetry model used at the time the rule was originally promulgated in 1976. When these risks are calculated in accordance with the latest dosimetry models described in Federal Guidance Report 13, the risks associated with these concentrations, while varying considerably, generally fall within the Agency's current risk target range for drinking water contaminants of 10^{-4} to 10^{-6}. Accordingly, we are not changing the MCL for beta particle and photon radioactivity at this time.

We also are concerned that under the regulatory changes for the beta particle and photon radioactivity MCL proposed in 1991 [8]) the concentrations of many individual radionuclides have associated lifetime cancer morbidity (and mortality) risks that exceed the Agency's target risk range. A newly proposed MCL expressed in mrem-ede could result in a more consistent risk level within the Agency's target risk range. However, in today's final rule, we are ratifying the current standard since it is protective of public health. At the same time, we believe a near future review of the beta particle and photon radioactivity MCL and the methods for calculating individual radionuclide concentration limits is appropriate. We intend to reevaluate the MCL under the authority of section 1412(b)(9) of the SDWA to ensure that the MCL reflects the best available science. This review will be performed as expeditiously as possible (expected to be 2 to 3 years).

Particular questions that we believe warrant examination as part of such a reevaluation process would include, but are not limited to, the following:

- What additional beta and photon emitters should be regulated?
- What is the appropriate aggregate MCL expression for this category of radionuclides?
- What new information concerning occurrence, analytical methods, health effects, treatment, costs, and benefits would have a bearing on this reevaluation?
- Is there an advantage to setting individual radionuclide concentration limits using a ''uniform risk level MCL''?
- If the basis of the current MCL changes, is there an advantage to and legal basis for setting concentration limits for individual beta particle and photon emitters within a guidance document that can be readily updated as scientific understanding improves?
- To what degree, in keeping with the provisions of sections 1412(b)(9) and 1412(b)(3)(A), can the existing methodology for calculating the concentration limits of individual beta and photon emitters be adjusted in accordance with the best available scientific models and information and still meet the requirement that revised regulations provide ''greater or equivalent protection to the health of persons''?
- How would any adjustments be reconciled with the requirement that MCLs be set ''as close as feasible'' to MCLGs?

Finally, we note that there should be no assumption, from the outset of this reevaluation, that the process will necessarily lead to a different set of individual beta and photon emitter concentration limits than those that result from the methodology incorporated by reference in the current and final rule. This reevaluation will involve a complicated set of legal, regulatory, and technical information that will need to be carefully considered.

a. Summary of Major Comments Regarding the Decision To Retain the Current Beta Particle and Photon Radioactivity MCL

Of the 70 commenters who responded to the April 21, 2000 NODA, approximately 14 commented on the MCL for beta particle and photon radioactivity. The commenters represented Federal agencies, State governments, local governments, water utilities, water associations, nuclear institute representatives and public interest groups. Seven commenters support EPA's proposal to retain the current MCL and several of these commenters agreed that it was appropriate to review the standard under the six year review process [9]. The commenters that supported EPA's proposal to maintain this MCL felt there was no appreciable occurrence of man-made beta emitters in drinking water, so it was not a pressing public health concern to revise the MCL. Several of these commenters also felt it was appropriate to delay action on lead-210 until more occurrence information becomes available.

Three of the 14 commenters objected to EPA's proposal to retain the current standard and to defer re-evaluation to the statutorily required six year process. These commenters felt that the Agency should propose to update the models used as the basis for the MCL on a shorter time-frame than the six year review process. The commenters felt that deferring the reevaluation of beta/photons to the six year review process would increase and perpetuate the uncertainty involved with standards which are used in waste management and cleanup decisions. One commenter pointed out that most DOE sites with

[8] 4 mrem ede with a look-up table of concentrations different from those calculated using the current MCL and the methodology incorporated by reference in the current rule.

[9] Six Year Review Process—Under the Safe Drinking Water Act (SDWA), the U.S. Environmental Protection Agency (EPA) must periodically review existing National Primary Drinking Water Regulations (NPDWRs) and, if appropriate, revise them. This requirement is contained in section 1412(b)(9) of SDWA, as amended in 1996, which reads, ''The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this title. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.''

radiological contamination are moving towards the final Record of Decision (ROD) stage (as required as part of site clean-up under the Superfund Program). The commenter felt that delaying the re-evaluation of this MCL until the next six year review process (2002–2008) would occur after most RODs were already in place and it would be too late to incorporate a new MCL into the RODs. The commenter further stated that some ROD commitments will be using clean up standards based on the 1976 values and if the standards are eventually relaxed, the committed RODs (which were based on the 1976 values) will be extremely expensive and may not be justifiable. EPA agrees that review of the MCL for beta particle and photon radioactivity is a priority and, as previously discussed in this section, the Agency intends to review this standard within the general time frame established for the U.S. Department of Energy's (DOE) submission of the licensing application for the Yucca Mountain site.

4. Retaining the Current Gross Alpha Particle Activity MCL

In 1991, EPA proposed excluding radium-226 from adjusted gross alpha particle activity, which is currently defined as the gross alpha particle activity result minus the contributions from uranium and radon (in practice, it is not necessary to exclude radon, since it volatilizes before analysis). The 1991 proposal to increase the combined radium-226/-228 MCL from 5 pCi/L combined to 20 pCi/L each made the adjusted gross alpha definition necessary, since the radium-226 MCL exceeded the adjusted gross alpha particle activity MCL. Besides addressing this inconsistency, at the time EPA believed that the unit risk from radium-226 was small enough that the change in the definition of adjusted gross alpha particle activity would not result in a significant change in health protectiveness. As discussed in the NODA, the 1991 risk analysis was based on the EPA RADRISK model, which is now outdated.

The most current risk analyses are based on FGR–13, discussed previously in today's preamble and in detail in the NODA and its Technical Support Document. These new radionuclide cancer risk coefficients greatly improved health effects analyses indicate that the unit risk from radium-226 is too significant to exclude radium-226 from adjusted gross alpha particle activity without an appreciable loss in health protectiveness. For this reason, today's rule does not change the definition of adjusted gross alpha from the current rule.

Also, as discussed in the NODA, further occurrence data will be collected for polonium-210 and radium-224 (discussed in more detail next) and, based on findings, EPA may propose in the future to address these and/or other contaminants that contribute to gross alpha particle activity through changes to the definition of adjusted gross alpha particle activity. Regardless of the findings concerning polonium-210 and radium-224 occurrence, the gross alpha particle activity standard will be reviewed under the required six year regulatory review process.

a. Summary of Major Comments Regarding the Decision to Retain the Current Definition of the (Adjusted) Gross Alpha Particle Activity MCL

Of the 70 commenters who responded to the April 21, 2000 NODA, approximately 23 commented on issues regarding the gross alpha particle activity MCL and/or whether or not to regulate polonium-210 and/or radium-224 separately. The summary of the comments regarding radium-224 is discussed further in the next section. The commenters represented State governments, local governments, water associations, water utilities, associations of elected officials and public interest groups. Of these 23 commenters, 14 stated that EPA should not regulate polonium-210 and/or radium-224 separately. Some commenters felt either the occurrence of these radionuclides is rare in water supplies or they felt that not enough occurrence data was available to warrant separate limits. EPA agrees that occurrence information should be collected before proposing separate standards. Commenters felt that occurrence information should be gathered under an unregulated contaminant monitoring mechanism, which EPA is doing in the case of polonium-210. Only one commenter supported an immediate separate standard for polonium-210 and quick gross alpha particle activity analysis to ensure that radium-224 was included in gross alpha particle activity measurement. EPA points out that a proposal would be necessary for such actions and that a proposal would require adequate occurrence information. Of those commenters who commented on retaining the current definition of the gross alpha particle activity MCL, including radium-226, most supported retaining the standard as is. However, three commenters stated that radium-226 should not be included in the gross alpha particle activity MCL, since it is already regulated in the combined radium-226/-228 standard. EPA points out that the contribution from radium-226 to the over-all risk from gross alpha particle activity is significant and that removing it would reduce the health protectiveness of the gross alpha particle activity standard. Also, two commenters felt that gross alpha particle activity should only be used as a screening tool (versus a standard) since the commonly occurring alpha emitting radionuclides are already covered under other standards. EPA points out polonium-210 is not regulated under any other standard at this time. The gross alpha particle activity standard will be reviewed under six year review and these and other considerations will be taken into account.

5. Further Study of Radium-224

As discussed in section I.C., recent studies show that there is a positive correlation between radium-228 and radium-224 (correlation coefficient of 0.82, approximately 1:1). This correlation means that in most situations in which a system has high radium-224 levels, it will also have high radium-228 levels and, with a less degree of certainty, high radium-226 levels. More details on this relationship, including the summary statistics, can be found in the NODA and its Technical Support Document (USEPA 2000e and 2000h). The expected result of these correlations is that high radium-224 levels will be mitigated by enforcement of the combined radium-226/-228 MCL, keeping in mind that treatment for radium does not differentiate between the different isotopes. Since radium-228 is estimated to be eight times more radiotoxic than radium-224, it appears that radium-224 may not be a pressing public health concern compared to the co-occurring regulated contaminant radium-228. The Agency plans to collect additional national occurrence information for radium-224, which may involve coordination with the USGS, and will evaluate whether future regulatory action or guidance is necessary. Radium-224 occurrence data collection activities are not as high a priority as addressing other radionuclide commitments such as the review of the beta particle and photon radioactivity MCL.

For several reasons, a change in the gross alpha particle activity holding time has been determined to be an inappropriate regulatory solution. First, the uncertainty in the national occurrence data does not allow EPA to determine the number of systems out of compliance with the gross alpha particle activity standard due to radium-224 if a

48–72 hour holding time is required. Since this change may result in a significant number of systems out of compliance with the current gross alpha particle activity MCL, EPA would need to issue a proposed amendment before making such a change. Such a proposal would require national level occurrence data for radium-224 in drinking water. Since EPA's next course of action is to collect such data to determine if a proposal is needed, EPA believes that this course of action is the appropriate one.

a. Summary of Major Comments on Radium-224

(1) The Use of a Short Gross Alpha Particle Activity Sample Holding Time to Measure Radium-224: Several commenters stated that the use of a short gross alpha sample holding time to measure radium-224 would raise technical difficulties and would be costly. Several commenters stated that there was not enough information to warrant a change to the gross alpha holding time or to regulate radium-224 separately. EPA agrees with this comment and, as stated in the Notice of Data Availability (NODA; USEPA 2000e), will not change the gross alpha holding time or regulate radium-224 separately in today's final rule. Some commenters stated that it would not be appropriate to change the holding time or to issue a separate standard in the final rule without a proposal. This is in agreement with what the Agency stated in the NODA.

(2) The Need to Regulate Radium-224: One commenter suggested that the radium-224 cancer mortality risk coefficient from Federal Guidance Report-13 (FGR–13) warranted a health concern and warranted regulating radium-224. While EPA agrees that radium-224 is a health concern, the radium-224 cancer mortality unit risk is eight times less than the radium-228 cancer mortality unit risk. In other words, it would take 40 pCi/L of radium-224 to present an equal cancer mortality risk as 5 pCi/L of radium-228. Since the correlation between radium-224 and radium-228 is approximately one-to-one (1:1) in the areas known to be of concern, one would typically expect to find 5 pCi/L of radium-224 associated with 5 pCi/L of radium-228. Since radium-226 and radium-228 also significantly co-occur, EPA believes that in most situations in which radium-224 occurs it would be present at levels lower than 5 pCi/L for systems in compliance with the combined radium-226/-228 standard. Table I–3 shows the predicted increase in risk for water systems in areas in which radium-224 is known to co-occur with radium-228, assuming a 1:1 correlation. This table shows that the presence of radium-224 increases the over-all combined radium risk by 5%–13%, depending on the relative contributions of radium-226 to radium-228 to the MCL of 5 pCi/L. EPA believes that this situation indicates that radium-224 may be of concern in some areas, but also believes that collecting data to determine if radium-224 is of national concern is the appropriate next step for determining if radium-224 should be regulated separately.

TABLE 1–3.—TYPICAL INCREASE IN COMBINED RADIUM RISK DUE TO PRESENCE OF RA-224 FOR WATER SYSTEMS WITH COMBINED RA-226/-228 LEVELS OF 5 PCI/L, ASSUMING A 1:1 CORRELATION OF RA-224 AND RA-228

Ra–226 (pCi/L)	Ra–228 (pCi/L)	Ra–224 (pCi/L)	Percent increase in risk due to presence of Ra–224
5	0	0	0%
4	1	1	5%
3	2	2	8%
2	3	3	10%
1	4	4	12%
0	5	5	13%

6. Entry Point Monitoring and the Standardized Monitoring Framework

The changes to the existing distribution system-based monitoring scheme proposed in 1991 are promulgated in today's final rule. New monitoring must be performed at entry points to the distribution system, which is meant to ensure that all customers are protected by the radionuclides NPDWRs. The 1976 monitoring scheme ensured that ''average customers'' were protected, but did not ensure that all customers were served by water at or below the MCL for the various radionuclides.

While EPA is finalizing a change to the point of compliance from a representative distribution system sampling point to all points of entry to the distribution system, EPA realizes that unless data grandfathering is allowed, many systems will have to re-establish monitoring baselines that have been established for many years. The ''monitoring baseline'' refers to the average contaminant level analytical result that is used for determining the future monitoring frequency. For this reason, EPA is allowing primacy entities (States, Tribes, and other) the option of developing data grandfathering plans that are suited to their individual situations (*e.g.,* occurrence patterns, water system configurations, and other factors) as a part of their primacy packages. This situation will allow primacy entities flexibility to grandfather historical data for determining future monitoring frequencies, while allowing EPA oversight of the process to ensure that the goal of having each entry point in compliance with the MCLs is met. Since future monitoring will be conducted at each entry point, this approach will ensure that compliance is achieved at every entry point.

The new requirements for uranium and radium-228 will mean that initial monitoring baselines for determining future monitoring frequencies will need to be established. Only community water systems that have gross alpha particle activity screening levels greater that 15 pCi/L will be required to monitor for uranium. Thus, many systems will be able to use historical gross alpha data to determine future monitoring frequency under the uranium standard. And, since the current monitoring requirements for gross alpha particle activity already require systems with gross alpha particle activity levels greater than 15 pCi/L to quantify uranium levels (to subtract out the uranium contribution to the gross alpha particle activity), EPA expects that many of these water systems will also be able to grandfather historical uranium data. Given this situation, EPA does not expect uranium monitoring requirements to be overly burdensome to community water systems or drinking water programs.

Community water systems without historical radium-228 data (expected to be those with gross alpha particle

activity levels less than 5 pCi/L and radium-226 levels less than 3 pCi/L) will need to establish an initial monitoring baseline to determine future monitoring frequency. Four consecutive quarterly samples will be required to establish this baseline. However, States and Tribes may waive the last two quarterly samples and determine the initial monitoring baseline on the first two samples if the results for the first two samples are below the detection limit (1 pCi/L), which would be considered a non-detect and would be reported as ''zero'' (this discussion assumes that radium-226 levels are also non-detects and are reported as zero). Systems with non-detects for radium-228 and radium-226 would have to monitor once every nine years after the initial monitoring period. Other monitoring requirements are discussed in section I.J.

7. Separate Monitoring for Radium-228 and Change to Systems Required To Monitor for Beta Particle and Photon Radioactivity

Separate monitoring for radium-228, proposed in 1991, is promulgated in today's rule. The need for separate monitoring of radium-228 is supported by the occurrence studies supporting the 1991 proposal and new occurrence studies (USEPA 2000e and i), which indicate that the 1976 radium-228 screens are not robust. Since the unit risks for radium-228 are higher than for radium-226 (described in the NODA and its Technical Support Document, USEPA 2000e and h), EPA believes that separate monitoring for radium-228, as proposed in 1991, is essential to enforcing the combined radium-226/-228 standard.

In addition, today's rule eliminates the previous requirement that all surface water systems serving more than 100,000 persons must monitor for beta particles and photon radioactivity. Beta particle and photon radioactivity monitoring will be performed only by community water systems designated by the State as ''vulnerable'' or ''contaminated''. In 1976, the Agency was concerned about nuclear fallout contaminating surface water sources. The Agency anticipated that large surface water systems (*i.e.* systems serving greater than 100,000 persons) would be vulnerable to becoming contaminated by nuclear testing activities. Therefore, the radionuclides regulation required all surface water systems serving more than 100,000 persons and any other systems determined by the State to be vulnerable to monitor for beta and photon emitters.

Since that time above-ground testing of nuclear weapons has been banned, and sources of man-made radiation are not expected, thus, large surface water systems are not automatically vulnerable to beta and photon emitters. As a result, the Agency has reevaluated the 1975 approach, and in today's rule, as proposed in 1991, is removing the requirement for all large surface water systems to monitor for beta and photon emitters, unless they have been designated as vulnerable by the State. The Agency believes that States are in the best position to determine which systems are vulnerable to beta and photon emitters. The EPA is also encouraging States to reevaluate a system's vulnerability to beta photon emitters when conducting source water assessments and provide immediate notification to those systems that have been deemed vulnerable.

8. Future Actions Regarding the Regulation of Radionuclides at Non-Transient Non-Community Water Systems

EPA will not regulate NTNC water systems with today's rule, but may propose to do so in the future. As described in the NODA (USEPA 2000e), EPA considered regulating non-transient non-community (NTNC) water systems for today's final rule, as proposed in 1991. The NODA also described EPA's analysis of the risks faced by customers of NTNC water systems, potential risk reductions, and compliance costs. EPA stated that several options were being considered for finalization: (1) Not regulating NTNC water systems; (2) regulating all NTNC water systems under the same requirements faced by CWSs; (3) regulating targeted NTNC water systems, based on occurrence potential, typical lengths of exposure, the age distribution of typical customers, and other factors; (4) issuing guidance recommending that States require that targeted NTNC systems monitor, and in some cases, mitigate to acceptable levels.

EPA's rationale for not regulating NTNC water systems at this time is based upon consideration of several factors. EPA summarized the results of a conservative Monte Carlo analysis of risks at NTNC water systems in the NODA and discussed the analysis in more detail in its Technical Support Document (USEPA 2000h). After evaluating the available information and the various comments on the NODA, EPA does not believe that exposure to radionuclides by consumers of water from NTNC systems poses an unacceptable health risk. This conclusion is based on consideration of the total pattern of exposure of individuals, considering their consumption of both NTNC water and water from other types of water systems. However, EPA's information for these radionuclides is limited and will be the subject of additional future analyses and reevaluation, together with any new data that can be obtained.

In the immediate future and in consultation with the National Drinking Water Advisory Committee (NDWAC), EPA will further evaluate various approaches to regulating NTNCs generally (including radionuclides). This further analysis will involve examination of additional data and information and will include further analysis of a full range of possible options. In this evaluation, EPA will consider risk analyses for adults and children, occurrence patterns, the national distribution of NTNC water systems, and other factors. In determining the appropriate action, EPA will consider the issue of consistency between the various regulations for chronic contaminants applicable to NTNC water systems, including future rules.

a. Summary of Major Comments on NTNCWSs and EPA Responses

Of the 70 commenters who responded to the April 21, 2000 NODA, approximately 31 commented on the issue of NTNC water systems and the options presented in the NODA. About 75 percent of these 31 commenters oppose regulation of NTNC water systems. While several of the commenters felt that EPA should only require targeted monitoring, many commenters felt that monitoring of NTNC water systems should be left to the discretion of the States. A few commenters felt that EPA should treat NTNC water systems like CWSs and require regulation and some commenters felt partial coverage of targeted NTNC water systems would be appropriate.

Those opposed to the regulation of NTNC water systems felt the cost/benefit and risk analyses presented in the NODA did not support a requirement to regulate. Some of those opposed to regulating NTNC water systems believe EPA needs to gather more information about the occurrence of radionuclides, the amount and percentage of water consumed, and the duration of exposure at NTNC water systems. Many commenters felt that EPA should allow States the flexibility or discretion to determine whether or not to regulate NTNC water systems and leave it to the States to target specific NTNC water systems. Some commenters

suggested that EPA issue guidance that recommends targeted NTNC water systems monitor and meet the CWS MCLs. In addition, some commenters stated that EPA should be consistent in all their rules when considering whether or not to regulate NTNC water systems. EPA believes that all of these comments have merit and that the regulation of radionuclides at NTNC water systems deserves further evaluation along with an analysis of additional data and information. If EPA proposes to regulate NTNC water systems in the future, stakeholders will have future opportunity to comment. Regarding State discretion, States may at any time choose to regulate NTNC water systems, either under a targeted rule or otherwise.

E. What Are the Health Effects That May Result From Exposure to Radionuclides in Drinking Water?

Radioactive drinking water contaminants differ from one another in ways that determine their harmfulness. Each radionuclide has a particular half-life and emits characteristic forms of radiation (alpha particles, beta particles, and/or photons). A radionuclide's half-life and concentration determine its radioactivity, *i.e.,* the number of radioactive ''decay events'' that occur in a particular unit of time. These factors, concentration, half-life, form of radioactive decay, and radiation energy, all determine a particular radionuclide's potential for impacting human health. For a discussion of half-life and the different forms of radioactive decay, see Appendix I (''Fundamentals of Radioactivity in Drinking Water'') to the Radionuclides NODA's Technical Support Document (USEPA 2000h).

The potential for harmful health effects from exposure to radioactive compounds results from the ability of ionizing radiation to chemically change the molecules that make-up biological tissues (*e.g.,* stomach, liver, lung) through a process called ''ionization.'' The radiation (alpha and beta particles and photons) emitted by radionuclides is called ''ionizing radiation'' because the radiation has sufficient energy to strip electrons from nearby atoms as they travel through a cell or other material. Ionization may result in significant chemical changes to biologically important molecules. For example, ionizing radiation can damage important molecules like DNA. DNA is the elementary building block for genes and the chemical that carries genetic information involved in many fundamental biological processes. Damage to the DNA of an individual gene may cause the gene to mutate, changing a cell's genetic code. Such mutation can lead to cancer. Since ionizing radiation may damage genes, it can adversely affect individuals directly exposed as well as their descendants. While much of this cellular damage is repaired by the body, restoring proper biological functions, the net result of an increase in exposure to ionizing radiation is an increase in the risk of cancer or harmful genetic mutations that may be passed on to future generations. (See, EPA's fact sheets on ionizing radiation and associated health effects at http://www.epa.gov/radiation/ionize.htm and in the record of this final rulemaking; (USEPA 1998a and1998c)).

Alpha emitters and beta/photon emitters differ in the magnitude of their biological effects. Alpha particles interact very strongly with matter (*e.g.,* human tissues), transferring their energy through these interactions. Beta particles interact less strongly, which allows them to travel further through tissue before being absorbed. The difference of interest is in the concentration of tissue damage. Alpha particles may damage many molecules over a short distance, while beta particles may damage molecules spread out over a greater distance. The actual number of potentially damaged molecules depends upon the energy of the alpha particle or beta particle (which differs between individual alpha emitters and beta emitters). Photon emissions may also interact with tissues, but they interact over much longer distances (they can pass through the body entirely). Exposure to any of these forms of radiation increases the risk of cancer.

All people are chronically exposed to background levels of radiation present in the environment. Many people also receive additional chronic exposures, including exposure to radionuclides in drinking water, and/or relatively small acute exposures, for example from medical X-rays. For populations receiving such exposures, the primary concern is that radiation could increase the risk of cancers or harmful genetic effects.

The likelihood of developing cancer or genetic mutations from short-term exposure to the concentrations of radionuclides found in drinking water supplies is negligible. However, long-term exposures may result in increased risks of genetic effects and other effects such as cancer, precancerous lesions, benign tumors, and congenital defects. For example, an individual that is exposed to relatively high levels of radium-228 (*e.g.,* 20 pCi/L) in drinking water over the course of a lifetime is projected to have a significantly increased chance of developing fatal cancer (roughly a one in one thousand increased risk if exposed to radium-228 at 20 pCi/L over a lifetime of 70 years).

The probability of a radiation-caused cancer or genetic effect is related to the total amount of radiation accumulated by an individual. Based on current scientific models, it is assumed that any exposure to radiation may be harmful (or may increase the risk of cancer); however, at very low exposures (*e.g.,* drinking water exposures below the MCL), the estimated increases in risk are very small and uncertain. For this reason, cancer rates in populations receiving very low doses of radiation may not show increases over the rates for unexposed populations.

For information on effects at high levels of exposure, scientists largely depend on epidemiological data on survivors of the Japanese atomic bomb explosions and on people receiving large doses of radiation for medical purposes. These data demonstrate a higher incidence of cancer among exposed individuals and a greater probability of cancer as the exposure increases. In the absence of more direct information, that data is also used to estimate what the effects could be at lower exposures. Where questions arise, scientists extrapolate from information obtained from cellular and molecular studies, but these extrapolations are acknowledged to be only estimates. Professionals in the radiation protection field prudently assume that the chance of a fatal cancer from radiation exposure increases in proportion to the magnitude of the exposure.

In the case of uranium in drinking water, we must consider not only carcinogenic health effects but also damage to the kidneys that may result from ingestion. When uranium radioactively decays in the body, it results in increased cancer risks. However, natural uranium isotopes have long half-lives, which means that uranium tends to persist in the body until it is excreted or stored in tissue. As discussed in detail in the Notice of Data Availability (USEPA 2000e), its Technical Support Document (USEPA 2000h), and the Toxicological Review of Uranium (USEPA 2000b) this persistent uranium may result in kidney toxicity. See section I.D.2 for a brief summary of kidney (renal) function and uranium toxicity.

1. Major Comments

Most comments on Health Effects related to three areas of risk estimation: (1) The use of a linear, non-threshold model, (2) not finding a threshold for

radium, and (3) not promoting claimed beneficial effects of ionizing radiation.

a. Linear Non-threshold Model: Some commenters suggested that the Agency abandon the linear nonthreshold (LNT) model it employs to estimate radiation induced carcinogenesis. They suggest a new paradigm should be used.

The Agency disagrees and believes its position is based on weight of evidence and support from national and international groups of experts interested in radiation protection. EPA classifies all radionuclides as Group A (known human) carcinogens. This classification is based on the considerable weight of epidemiological evidence that exposure to high doses of ionizing radiation causes cancer in humans and on the fact that all radionuclides emit ionizing radiation. Radiation has been shown to induce unique DNA damage, mutations, and transformation of cells in culture. The monoclonal nature of cancers is evidence that a single ''wild'' cell can give rise to a cancer. For alpha particles, it has been shown experimentally that a single alpha passing through a cell is sufficient to induce a mutational event; there are strong theoretical reasons to expect that the same is true for low energy transfer (LET) radiation such as gamma rays. Since a single particle traversal of a cell is the minimum event for radiation exposure, a prudent assumption is that there is no threshold for radiation induced mutations.

To estimate radiogenic cancer risks and to regulate low-dose radiation exposures from continuous intakes of radionuclides in environmental media, EPA uses a linear, non-threshold (LNT) dose-response model. The LNT model permits direct extrapolation of low-dose cancer risks from high-dose exposures—allowing for adjustments, as needed, for differences in radiation quality, dose rate, and exposed populations, including such factors as age at exposure, time since exposure, baseline cancer rates, and gender and assumes that there is no threshold for effects; *i.e.,* it is assumed that exposure to any amount of radioactivity has a finite potential to induce cancers in humans. As noted above, support for the LNT model comes in part from the linear dose-response relationships observed for most types of cancers in the intermediate- to high-dose range for atomic bomb survivors, and from results of molecular and cellular studies. Several such studies have shown that a single radiation track traversing a cell nucleus can cause unrepaired or misrepaired DNA lesions and chromosomal aberrations. Other studies have shown that DNA lesions and chromosomal aberrations can lead to cancer. From these studies, it is assumed that the probability of DNA damage and carcinogenesis is linearly proportional to the dose.

EPA's application of the LNT model to estimate and regulate cancer risks from environmental exposures to radionuclides is entirely consistent with all past and current observations and recommendations of the International Commission on Radiological Protection (ICRP), the National Council on Radiation Protection and Measurements (NCRP), the National Academy of Sciences Committee on the Biological Effects of Ionizing Radiation (BEIR), and the United Nations Scientific Committee on the Effect of Atomic Radiation (UNSCEAR), and the National Radiation Protection Board (NRBP). Citing the recommendations of these national and international advisory bodies, the U.S. Department of Energy, the U.S. Nuclear Regulatory Commission, and other Federal and State agencies with regulatory authority over radioactive materials also apply the LNT model as the basis for setting regulations and guidelines for radiation protection. However, to address these limitations and the uncertainties associated with this model and improve its radiation risk assessments, EPA is actively supporting national and international studies of radiation dosimetry and dose reconstruction, radionuclide biokinetics, quantitative techniques for uncertainty analyses, and long-term follow-up epidemiological studies of populations exposed chronically to low-dose radiation. The Agency also continues to review its policies and positions as new reports and data are published so that the best science is applied.

b. Radium Carcinogenicity Threshold: Some commenters have suggested that there is a threshold for radium carcinogenicity. They generally base this conclusion on the ''Radium Dial Painter'' studies.

The Agency disagrees. While the ''Radium Dial Painter'' studies are interesting, they are of limited value for the estimation of risk. First, no one knows the quantity of radium ingested in those studies, so dose estimates are speculative. The intake estimates are based on the body burden the first time the subjects were measured and back-calculated with biokinetics modeling. Moreover, the quantities of radium ingested by the subjects was great enough to cause extensive skeletal pathology and interfere with normal bone metabolism. In addition to problems of radium dosimetry, the high mortality in some groups, and the small numbers of subjects in all exposure groups, would impair use of the data to develop dose response relationships.

Only a small fraction of persons known to have been exposed to radium have been located and their radium content at that time measured. Of 6,675 subjects identified above as being in the data base and as having been exposed to radium, 2,383 have been measured to determine their radium-226 burden. (21 of the 85 osteosarcomas occurred in subjects who had never been measured for radium burden.) Since the radium intake in dial painters is unknown, body burden is known only from the date of first radioassay (usually many years after the radium intake), and metabolism is estimated from other sources, estimates of the radiation dose must be based on a series of poorly verified assumptions. In spite of these inherent problems in the data set, efforts have been made to use the radium dial workers, or some subset of them, to establish a ''practical threshold'' for radium or other internal emitter exposure.

The ''practical threshold'' concept is derived from studies of chemical carcinogenesis which include dose levels causing extensive life shortening. Plots of the mean age at tumor onset vs dose indicates an increase in tumor latency with decreasing dose. Extrapolation of these curves to environmental dose levels has led some investigators to conclude at these dose levels tumor latency would exceed the human life span. This ''practical threshold'' is as an argument for a threshold and against LNT models. The ''practical threshold'' model has been examined and rejected by experts at the International Agency for Research on Cancer (IARC). The IARC warned in their discussion regarding mean tumor latency or mean age at tumor onset that ''care must be taken not to extrapolate the observed tendency for the mean age at onset to increase with decreasing dose below the dose range in which most animals get cancer. Failure to observe this restriction has led to the unjustified speculation that progressively lower and lower human doses of environmental contaminants will produce cancers only at age 200 or 300 years; for refutation, see Peto (1978).''

Even if there were no problems with intake, dose, metabolism, extensive pathology, etc., as mentioned above, the radium dial studies would be uninformative on the subject of the dose response relationship at environmental exposure levels. The number of subjects and their distribution in dose categories is too small. The number of subjects

needed to show a given risk increases as the square of the decrease in dose. For example, if 10 subjects are required to show an radiogenic risk at dose level x, 250 would be needed to show the same risk at dose level x/5, and 1000 at dose level x/10. There just are not enough subjects at lower dose levels to show the risk, giving the illusion of a threshold.

The claims regarding a possible ''practical threshold'' addressed above are based solely on the bone cancer data. However, bone cancer constitutes only a fraction of the estimated risk from ingested radium. Radium-226 has also been found to induce epithelial cancers in sinuses in the head (due to radon-222 released into the sinus air spaces from the decay of radium-226 in bone). The data in the dial painter study is inadequate to develop a dose response relationship for sinus cancers, however the number of epithelial cancers expected in the dial painters is about the same as the number of bone cancers. The number of bone cancers in the Agency's radium-226 risk model is doubled to get an estimate of combined bone and sinus cancers. In addition to bone cancer, patients treated with radium-224 were found to have significant increases in breast cancer, soft tissue sarcomas, liver cancer, thyroid cancer, cancers of urinary organs, and leukemia. Given our understanding of radium metabolism and the effects of alpha irradiation, it is expected that ingestion of any of the radium isotopes will increase the risks for various types of cancer other than bone. EPA's risk estimates include all these potential sites.

c. ''Beneficial Effects'' of Radiation: One commenter suggests there are beneficial effects of radiation, ''Hormesis'' (small doses of radiation are good for you) and ''Adaptive Response'' (relatively small doses of radiation protect against large doses of radiation).

The Agency finds that, based on available scientific evidence, these phenomena are not relevant to environmental radiation protection. Neither has been shown to occur at environmental dose levels. Neither has been shown to influence the dose response for induction of radiation induced cancer. Hormesis has not been demonstrated in normal healthy active populations of mammals, much less in humans. Adaptive response may have some application in radiotherapy (very high radiation doses), but it is not relevant to environmental exposure levels.

Hormesis is a non-specific phenomenon. Biological, chemical, or physical agents may stimulate hormesis; thus, cold, physical stress, toxic chemicals, antibiotics, as well as ionizing radiation, can be hormetins. Hormesis originally was used to describe a stimulatory effect, which was not inherently good or bad. Recent usage of the term ''Radiation Hormesis'' implies the discussion relates to beneficial effects. It should not, however, imply absence of radiation carcinogenesis.

The ''adaptive response'' is also a nonspecific response to stress, which has been observed at the cellular level. An ''adaptive response'' is observed experimentally when a ''conditioning'' exposure is given, followed at some later time by a ''challenge'' exposure, and the response in the ''conditioned'' organism or cell culture is less than in controls; that is, the conditioning exposure was ''protective'' against the challenge. In typical studies where cells in culture are given a conditioning dose of radiation in the range of 0.2 to 20 rad (2 to 200 milliGray or mGy), a dose of 100 to 200 rad (1000 to 2000 mGy) given later causes only about 50% as great an effect as that observed in controls with no conditioning exposure. However several points are noteworthy: not all cells respond, effects may be different for cells at different stages in the cell cycle, not all conditioning doses give the same response (sometimes instead of protection there is synergism between doses), the ''adaptive'' effects are transient, and the timing of the challenge dose may be critical to response. Given these limitations, EPA does not believe it is appropriate at this time to consider such an adaptive response in its assessment of the risks from environmental levels of radiation.

F. Does This Regulation Apply to My Water System?

The NPDWRs for combined radium-226 and radium-228, gross alpha particle radioactivity, beta particle and photon radioactivity, and uranium apply to all community water systems.

G. What Are the Final Drinking Water Regulatory Standards for Radionuclides (Maximum Contaminant Level Goals and Maximum Contaminant Levels)?

The maximum contaminant level goals (non-enforceable health-based target, MCLGs) and maximum contaminant levels (enforceable regulatory limits, MCLs) are listed in table I–4. For the reasons already described, EPA is retaining the existing MCLs for combined radium-226 and radium-228, gross alpha, and beta particle and photon radioactivity. EPA is finalizing an MCL of 30 µg/L for uranium, based on kidney toxicity and cancer risk endpoints. The final MCLGs are zero for all radionuclides, based on the no-threshold cancer risk model for ionizing radiation.

TABLE I–4.—MCLGS AND MCLS FOR RADIONUCLIDES IN DRINKING WATER (OTHER THAN RADON)

Contaminant	MCLG (pCi/L)	MCL
Combined Radium-226 and Radium-228	Zero	5 pCi/L.
Gross Alpha (Excluding radon and uranium)	Zero	15 pCi/L.
Beta Particle and Photon Radioactivity	Zero	4 mrem/year.
Uranium	Zero	30 µg/L.

H. What Are the Best Available Technologies (BATs) for Removing Radionuclides From Drinking Water?

Under the SDWA, EPA must specify the best available technology (BAT) for each MCL that is set. PWSs that are unable to achieve an MCL may be granted a variance if they use the BAT and meet other requirements (see section I.M for a discussion of variances and exemptions). Table I–5 lists the best available technologies (BATs) for complying with the radionuclides MCLs.

TABLE I–5.—BEST AVAILABLE TECHNOLOGIES (BATS) FOR RADIONUCLIDES IN DRINKING WATER

Contaminant	BAT
Combined radium-226 and radium-228	Ion Exchange, Lime Softening, Reverse Osmosis.

TABLE I–5.—BEST AVAILABLE TECHNOLOGIES (BATs) FOR RADIONUCLIDES IN DRINKING WATER—Continued

Contaminant	BAT
Gross alpha (excluding radon and uranium)	Reverse Osmosis.
Beta particle and photon radioactivity	Ion Exchange and Reverse Osmosis.
Uranium	Ion Exchange, Lime Softening; Reverse Osmosis, Enhanced Coagulation/Filtration.

In addition to BATs, the SDWA, as amended in 1996, requires EPA to list small system compliance technologies (the requirements are described in section I.M). EPA published a list of small systems compliance technologies for the existing radionuclide MCLs in 1998 (63 FR 42032) and issued a guidance document on their use (USEPA 1998f). EPA took comment on small system compliance technologies for uranium in the NODA (USEPA 2000e; 65 FR 21576). Table I–6 is a compilation of all of the small systems compliance technologies for radionuclides, including limitations, required operator skill, raw water quality ranges, and other considerations. Table I–7 shows the small systems compliance technologies listed for: combined radium-226 and radium-228, gross alpha particle radioactivity, beta particle and photon radioactivity, and uranium.

TABLE I–6.—LIST OF SMALL SYSTEMS COMPLIANCE TECHNOLOGIES FOR RADIONUCLIDES AND LIMITATIONS TO USE

Unit technologies	Limitations (see footnotes)	Operator skill level required [1]	Raw water quality range & considerations [1]
1. Ion Exchange (IE)	([a])	Intermediate	All ground waters.
2. Point of Use (POU [2]) IE	([b])	Basic	All ground waters.
3. Reverse Osmosis (RO)	([c])	Advanced	Surface waters usually require pre-filtration.
4. POU [2] RO	([b])	Basic	Surface waters usually require pre-filtration.
5. Lime Softening	([d])	Advanced	All waters.
6. Green Sand Filtration	([e])	Basic	
7. Co-precipitation with Barium Sulfate	([f])	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/Electrodialysis Reversal.		Basic to Intermediate	All ground waters.
9. Pre-formed Hydrous Manganese Oxide Filtration.	([g])	Intermediate	All ground waters.
10. Activated alumina	([a]), ([h])	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency.
11. Enhanced coagulation/filtration	([i])	Advanced	Can treat a wide range of water qualities.

[1] 1 National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, DC 1997.

[2] 2A POU, or ''point-of-use'' technology is a treatment device installed at a single tap used for the purpose of reducing contaminants in drinking water at that one tap. POU devices are typically installed at the kitchen tap. See the April 21, 2000 NODA for more details.

Limitations Footnotes to Table I–6: Technologies for Radionuclides

[a] The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

[b] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance.

[c] Reject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in the SWTR Compliance Technologies Table.

[d] The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

[e] Removal efficiencies can vary depending on water quality.

[f] This technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

[g] This technology is most applicable to small systems that already have filtration in place.

[h] Handling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.

[i] Assumes modification to a coagulation/filtration process already in place.

TABLE I–7.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR RADIONUCLIDE NPDWRS

Contaminant	Compliance technologies [1] for system size categories (population served)		3,300–10,000
	25–500	501–3,300	
Combined radium-226 and radium-228	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9
Gross alpha particle activity	3, 4	3, 4	3, 4
Beta particle activity and phton activity	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4

TABLE I–7.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR RADIONUCLIDE NPDWRS—Continued

Contaminant	Compliance technologies [1] for system size categories (population served)		3,300–10,000
	25–500	501–3,300	
Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11

Note: (1) Numbers correspond to those technologies found listed in the table I–6 above.

I. What Analytical Methods Are for Compliance Monitoring of Radionuclides?

The approved methods for compliance monitoring of radionuclides are listed in § 141.25. These methods are shown in Table I–8. A large portion of the approved methods for radionuclides were added after the 1991 proposed rule (56 FR 33050). There, the Agency proposed to approve fifty-six methods for the measurement of radionuclides in drinking water (excluding radon). Fifty-four of the fifty-six were actually promulgated in the March 5, 1997 final methods rule (62 FR 10168). In addition to these fifty-four, EPA also promulgated 12 radiochemical methods in the March 5, 1997 final methods rule, which were submitted by commenters after the 1991 proposed rule.

In the March 5, 1997 final methods rule for radionuclides (62 FR 10168), the Agency approved several methods for the analysis of uranium. Specific analysis for uranium can be performed by radiochemical methods, alpha spectrometry, fluorometric (mass), or laser phosphorimetry (mass) (see Table I–8). The radio-chemical method separates and concentrates uranium from potentially-interfering radionuclides and non-radioactive sample constituents. The resulting concentrate, depending on the method, can then be counted by gas flow proportional counting, alpha scintillation, or alpha spectrometry. Results from proportional counting or alpha scintillation counting accurately determine the alpha emission rate from total uranium in the sample; however, the uranium isotope ratio (uranium-234/uranium-238) cannot be determined and the uranium mass cannot be estimated unless an empirical conversion factor is applied to the measured count rate. The use of alpha spectrometry allows for the determination of individual isotopes of uranium and the accurate calculation of the mass of uranium-238 present in the sample. Additionally, the concentration of uranium-234 can be accurately measured, if necessary to assess the radiotoxicity of this isotope.

Both the fluorometric and the laser phosphorimetry methods measure the mass of uranium-238 present in the sample; a conversion factor must be used to convert the mass measurement to an approximate radioactivity concentration in picoCuries. The computed radioactivity is only approximate because the ratio of uranium isotopes must be assumed. The use of mass-type methods is acceptable provided a conversion factor of 0.67 pCi/µg is used to convert the fluorometric or laser phosphorimetry uranium-238 mass result from micrograms to picoCuries. This conversion factor is conservative and is based on a 1:1 ratio of uranium-234 to uranium-238 in uranium-bearing minerals. The scientific literature indicates that the activity ratio varies in ground water from region to region (typically from 0.67 to 1.5 pCi/µg).

EPA recognizes that the mass conversion factor is conservative in that the calculated uranium alpha emission rate based on the mass measurement may be biased low (*i.e.,* underestimated). The use of this conversion factor may result in a larger net gross alpha (gross alpha less the calculated uranium gross alpha contribution), which may require additional testing to resolve. Conversely, the calculated mass of uranium based on gross alpha could be biased high and result in an overestimation, which may require additional testing to resolve. Both situations are protective in that the bias requires additional testing to resolve when the uranium concentration in a sample is near the proposed MCL regardless of which method is used to measure the uranium.

1. Major Comments

a. Request for ICP-MS Method for Uranium: In response to the NODA, several commenters asked EPA to consider the approval of an Inductively Coupled Plasma Mass Spectrometry (ICP-MS) method for uranium analysis (a mass method). Many commenters stated that the ICP-MS method (*i.e.,* EPA 200.8 or SM 3125) is more cost-effective, less labor-intensive and offers greater sensitivity than some of the currently approved methods for uranium analysis. EPA is currently reviewing the ICP-MS method for uranium and will publish a proposal and a final in a future rulemaking.

b. Detection Limit for Uranium: In 1976, the NPDWRs defined the ''detection limit'' (DL) as the ''concentration which can be counted with a precision of plus or minus 100 percent at the 95 percent confidence level (1.96 σ, where σ is the standard deviation of the net counting rate of the sample).'' The detection limits for gross alpha, radium-226, radium-228, gross beta and other radionuclides are listed at § 141.25 and reproduced in Table I–9. In the NODA, EPA stated that it would maintain the use of detection limits as the required measures of sensitivity for radiochemical analysis, instead of using the method detection limit (MDL), the practical quantitation level (PQL) and acceptance limits, as was proposed in 1991. Although no comments were submitted about EPA's decision to maintain the use of the detection limits listed in § 141.25, several commenters submitted comments about the appropriate measure of sensitivity for uranium.

Since uranium was not previously regulated, no detection limit is listed in the CFR and none was proposed in 1991. In 1991, the Agency only proposed a PQL (5 pCi/L) and an acceptance limit (±30%) for uranium. Because the NODA was not the appropriate mechanism to propose a detection limit for uranium, the Agency stated that it ''may have to adopt the PQL for uranium until a detection limit is proposed.'' Several commenters disagreed with the use of a PQL and acceptance limits for uranium. They felt that EPA should be consistent with other regulated radionuclides and set a detection limit for uranium as the required measure of sensitivity. The Agency agrees with the commenters and will propose a detection limit for uranium in a future rulemaking before the compliance date of this rule to be consistent with the sensitivity measures used for other radionuclides.

TABLE I–8.—ANALYTICAL METHODS APPROVED BY EPA FOR RADIONUCLIDE MONITORING (§ 141.25)

Contaminant	Methodology	Reference (method or page number)								
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]	Other
Naturally occurring:										
Gross alpha [11] and beta	Evaporation	900.0	p 1	00–01	p 1	302, 7110 B		R–1120–76		
Gross alpha [11]	Co-precipitation	.....		00–02		7110 C				
Radium 226	Radon emanation	903.1	p 16	Ra-04	p 19	7500-Ra C	D 3454–91	R–1141–76	Ra-05	N.Y. [9]
	Radiochemical	903.0	p 13	Ra-03		304, 305, 7500-Ra B	D 2460–90	R–1140–76		
Radium 228	Radiochemical	904.0	p 24	Ra-05	p 19	304, 7500-Ra D		R–1142–76		N.Y. [9] N.J. [10]
Uranium [12]	Radiochemical	908.0				7500-U B				
	Fluorometric	908.1				7500-U C (17th Ed.)	D 2907–91	R–1180–76 R–1181–76	U-04	
	Alpha spectrometry	.....		00–07	p 33	7500-U C (18th or 19th Ed.)	D 3972–90	R–1182–76	U-02	
	Laser phosphorimetry	.....					D 5174–91			
Man-made:										
Radioactive cesium	Radiochemical	901.0	p 4			7500-Cs B	D 2459–72	R–1111–76		
	Gamma ray spectrometry	901.1			p 92	7120	D 3649–91	R–1110–76	4.5.2.3	
Radioactive iodine	Radiochemical	902.0	p 6 p 9			7500–1 B 7500–1 C 7500–1 D	D 3649–91			
	Gamma ray spectrometry	901.1			p 92	7120 (19th Ed.)	D 4785–88		4.5.2.3	
Radioactive Strontium 89, 90.	Radiochemical	905.0	p 29	Sr-4	p. 65	303, 7500-Sr B		R–1160–76	Sr-01 Sr-02	
Tritium	Liquid scintillation	906.0	p 34	H-2	p. 87	306,7500–3H B	D 4107–91	R–1171–76		
Gamma emitters	Gamma ray spectrometry	901.1			p 92	7120 (19th Ed.)	D 3649–91	R–1110–76	4.5.2.3	
		902.0				7500-Cs B	D 4785–88			
		901.0				7500-I B				

[1] ''Prescribed Procedures for Measurement of Radioactivity in Drinking Water,'' EPA 600/4–80–032 , August 1980. Available at U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

[2] ''Interim Radiochemical Methodology for Drinking Water,'' EPA 600/4–75–008 (revised), March 1976. Available at NTIS, ibid. PB 253258.

[3] ''Radiochemistry Procedures Manual'', EPA 520/5–84–006, December 1987. Available at NTIS, ibid. PB 84–215581.

[4] ''Radiochemical Analytical Procedures for Analysis of Environmental Samples,'' U.S. Department of Energy, March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] Standard Methods for the Examination of Water and Wastewater, 13th, 17th, 18th, 19th Editions, 1971, 1989, 1992, 1995. Available at American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005. Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Methods 7110B, 7110 C, 7500-Ra B, 7500-Ra C, 7500-Ra D, 7500-U B, 7500-Cs B, 7500-I B, 750–9I C, 7500–D, 7500-Sr B, 7500–3H B are in the 17th, 18th and 19th editions. Method 7500-U C Fluorometric Uranium is only in the 17th Edition, and 7500-U C Alpha spectrometry is only in the 18th and 19th editions. Method 7120 is only in the 19th edition. Methods 302, 303, 304, 305 and 306 are only in the 13th edition.

[6] Annual Book of ASTM Standards, Vol. 11.02, 1994; American Society for Testing and Materials; any year containing the cited version of the method may be used. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[7] ''Methods for Determination of Radioactive Substances in Water and Fluvial Sediments,'' Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available at U.S. Geological Survey Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] ''EML Procedures Manual'', 27th Edition, Volume 1, 1990. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

[9] ''Determination of Ra-226 and Ra-228 (Ra-02),'' January 1980; Revised June 1982. Available at Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10] ''Determination of Radium 228 in Drinking Water,'' August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11] Natural uranium and thorium-230 are approved as gross alpha-particle activity calibration standards for the gross alpha co-precipitation and evaporation methods; americium-241 is approved for use with the gross alpha co-precipitation methods.

[12] If uranium (U) is determined by mass-type methods (*i.e.,* fluorometric or laser phosphorimetry), a 0.67 pCi/μg uranium conversion factor must be used. This conversion factor is conservative and is based on the 1:1 activity ratio of U-234 to U-238 that is characteristic of naturally-occurring uranium in rock.

TABLE I–9.—REQUIRED REGULATORY DETECTION LIMITS FOR THE VARIOUS RADIOCHEMICAL CONTAMINANTS (§ 141.25)

Contaminant	Detection Limit (pCi/L)
Gross Alpha	3
Gross Beta	4
Radium-226	1
Radium-228	1
Cesium-134	10
Strontium-89	10
Strontium-90	2
Iodine-131	1
Tritium	1,000
Other Radionuclides and Photon/Gamma Emitters.	1/10th of the rule.

J. Where and How Often Must a Water System Test for Radionuclides?

1. Monitoring Frequency for Gross Alpha, Radium 226, Radium 228, and Uranium

The monitoring scheme being finalized today provides for more frequent, but less sample-intensive (on a per compliance site basis), monitoring for systems with a demonstrated inherent vulnerability and reduced monitoring for systems with low contaminant levels, which will apply to most systems. Instead of the current monitoring framework for radionuclides of four samples every four years for results above 50% of the MCL and one sample every 4 years for those at or below 50% (at State discretion), the revised rule calls for one sample every three years for compliant systems with average contaminant levels above 50% of the MCL but at or below the MCL, one sample every 6 years for systems with levels above the detection limit and at or below 50% of the MCL, and every 9 years for systems with levels below the detection limit.

2. Monitoring Frequency for Beta Particle and Photon Radioactivity

Beta particle and photon radioactivity monitoring will be performed only by community water systems designated by the State as ''vulnerable'' or ''contaminated''. A community water systems (both surface and ground water) designated by the State as vulnerable must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system, beginning within one quarter after being notified by the State. Systems already designated by the State must continue to sample until the State reviews and either reaffirms or removes the designation. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average less than or equal to 50 pCi/L (screening level), the system may reduce the frequency of monitoring at that sampling point to once every 3 years.

Community water systems (both surface and ground water) designated by the State as utilizing waters contaminated by effluents from nuclear facilities must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system, beginning within one quarter after being notified by the State. Systems already designated by the State as systems using waters contaminated by effluents from nuclear facilities must continue to sample until the State reviews and either reaffirms or removes the designation. If the gross

beta particle activity beta minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average less than or equal to 15 pCi/L (screening level), the system may reduce the frequency of monitoring at that sampling point to every 3 years.

For CWS in the vicinity of a nuclear facility, the State may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the State determines if such data is applicable to a particular water system. Community water systems designated by the State to monitor for beta particle and photon radioactivity can not apply to the State for a waiver from the monitoring frequencies.

Several USGS studies, including the study entitled Gross-beta Activity in Ground Water: Natural Sources and Artifacts of Sampling and Laboratory Analysis, have found that Potassium-40 and Radium-228 appear to be the primary sources of beta activity in ground water. EPA recognizes that naturally occurring potassium could trigger many systems into conducting expensive beta speciation analysis due to exceedance of the screening level. Therefore, as noted above, naturally occurring Potassium-40 analyzed from the same or equivalent sample used for the gross beta analysis may be subtracted from the total gross beta activity to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with § 141.66(d). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

The regulatory language in § 141.26(b)(6) of today's rule requires systems to monitor monthly at sampling points which exceed the maximum contaminant levels in § 141.66(d) beginning in the next month after the exceedance occurred. There are many circumstances that may arise from this requirement such as collecting and obtaining the results in two separate months, however, the EPA intended this to require all systems to collect the initial monthly sample no later than 30 days following the collection date of the initial MCL exceedance.

The EPA believes that States have evaluated the vulnerability of systems to potential beta emitting sources under the existing rule. Therefore, States should use the existing vulnerability assessments to notify systems of their status and monitoring requirements if they have not provided that notification previously. The EPA is also encouraging States to reevaluate a systems vulnerability to beta photon emitting sources when conducting a systems source water assessment and provide immediate notification to those systems that have been deemed vulnerable.

3. Sampling Points and Data Grandfathering

Because the current radionuclide NPDWRs have been in effect for almost 25 years, States have much historical distribution system data for the regulated radionuclides at most community water systems and have data regarding occurrence patterns at various scales. The monitoring scheme is an attempt to balance two opposing goals: first, to ensure that every entry point is in compliance, and second, to allow States and drinking water systems to make maximal use of the existing distribution system historical data.

To meet the first goal, today's final rule requires that all new monitoring be at the entry point to the distribution system. This will ensure that all entry points are in compliance with the MCLs from now on. But, rather than narrowly prescribing specific criteria for grandfathering existing distribution system data, today's rule provides flexibility to States to devise a grandfathering plan applicable to their own circumstances. In particular, States may devise a plan for determining which systems will need to analyze new samples from each entry point to establish initial monitoring baselines for the currently regulated radionuclides and which can rely on the existing distribution system data for the same purpose (including existing uranium data). EPA had considered more prescriptive options, such as allowing grandfathering for systems with fewer than three entry points, systems serving fewer than 3,300 persons, systems drawing from aquifers of certain characteristics, etc. However, the many competing variables present at the local level make generalizations impractical at the national level. Since the grandfathering plans will be a part of the primacy packages approved by the EPA Regions, EPA will have oversight over these plans. EPA expects that the plans would allow grandfathering only for situations in which it is to be expected that every entry point is in compliance with the MCLs. For example, if a system with five entry points (all of significant flows) has gross alpha monitoring data from a representative point in the distribution system and the result is 75% of the MCL (11 pCi/L), EPA expects that this data would not be grandfathered, since it can not be ruled out that at least one of the entry points has a contaminant level greater than the MCL. On the other hand, if the distribution system sample baseline result is below the detection limit and the State determines that, based on aquifer and other characteristics, the entry points are expected to have fairly uniform contaminant levels, then a State could reasonably determine that this water system should be able to grandfather its distribution system data. EPA will provide an Implementation Guidance to further explain this issue after today's rule is final.

4. Does the Rule Allow Compositing of Samples?

Compositing allows a system to have combined samples analyzed to reduce the costs of monitoring. Compositing of samples is done in the laboratory. The 1976 rule allowed compositing for gross alpha and allowed (but did not recommend) some compositing for beta/photon emitters. Compositing is essentially an issue for the initial round of monitoring for systems without data to grandfather. Once decreased monitoring is in effect, only a single sample will be required and compositing will not be an issue. In general, there are three kinds of compositing: combining samples taken from the same sampling point from different quarters (temporal compositing), samples taken in the same quarter from different sampling points within a system (spatial compositing), and samples taken from different water systems each having one well (inter-system compositing). Inter-system and spatial compositing are not allowed in today's rule, since this kind of compositing defeats the purpose of monitoring at each entry point to the distribution system.

Because compositing lessens the burden on systems and allows for adequate monitoring reliability in some situations, temporal compositing is allowed under circumstances in which the detection limit is low compared to the MCL. In particular, temporal compositing is allowed for uranium, gross alpha radium-226 (provided a DL of 1 pCi/L is met) and radium-228 (provided a DL of 1 pCi/L is met). While

compositing is allowed under these circumstances, compositing of several samples taken at different times provides less information than individual analysis of the samples. For example, if contaminant levels vary appreciably with pumping rates and pumping rates are seasonal, compositing will hide this potentially significant variance. Additionally, if a State allows a system with low contaminant levels to base compliance on two results from different quarters, compositing may not be desirable. If a State wishes to be more stringent and use the highest result of four initial samples to set future monitoring frequency, compositing is not appropriate. However, under some conditions, States may wish to allow water systems to have their samples composited before analysis.

Commenters generally agreed that spatial monitoring was impractical, since it would provide limited information on contaminant levels at individual entry points. Some commenters suggested that the six month holding time for gross alpha would necessitate compositing twice, two samples in the first six months and two in the second six months. Although this type of compositing would be allowed, EPA disagrees that this is necessary, since, for statistical reasons, analysis of four composited samples taken in four different quarters will achieve results of comparable quality (assuming that the analysis is done within the same year that the first sample is taken) to individual analyses of four samples using six month holding times. For this reason, annual compositing at a single entry point is allowed for gross alpha. While several commenters were desirous of maximum compositing flexibility, the technical limitations described rule out some types of compositing, specifically spatial and inter-system compositing.

5. Interpretation of Analytical Results

The Agency recognizes that States have interpreted radionuclide analytical results in a variety of ways, including adding or subtracting standard deviations from the analytical results. The Agency believes that compliance and reduced monitoring frequencies should be calculated based on the ''analytical result(s)'' as stated in § 141.26(c)(3). It is EPA's interpretation that the analytical result is the number that the laboratory reports, not including (*i.e.* not adding or subtracting) the standard deviation. For example, if a laboratory reports that the gross alpha measurement for a sampling point is 7 ± 2 pCi/L, then compliance and reduced monitoring would be calculated using a value of 7 pCi/L.

K. Can My Water System Use Point-of-Use (POU), Point-of-Entry (POE)[10]*, or Bottled Water To Comply With This Regulation?*

EPA has listed: (1) POU ion exchange and POU reverse osmosis as small system compliance technologies for combined radium-226 and radium-228, and beta particle and photon radioactivity; and (2) POU reverse osmosis as a small systems compliance technology for gross alpha particle activity (63 FR 42032; on August 6, 1998, also see Table I–6 and I–7)). While these POU technologies are not considered BAT for large systems, they may be used as BAT under sections 1412 and 1415 of the Act for systems serving 10,000 persons or fewer. Guidance documents were published to support the small systems compliance technology lists (''Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996,'' USEPA 1998f). The small system compliance technology list described in section I.H., table I–6, of today's final rule is identical to the 1998 list, with the exception of the addition of small systems compliance technologies for uranium. See section I.H. for details about the lists. POE technologies are not being listed as small systems compliance technologies since they are considered emerging technologies and due to concerns regarding waste disposal and costs. POE technologies (and other technologies) may be added in the future through small system compliance technology updates.

The authority for listing POU technologies as small system compliance technologies comes from section 1412(b)(4)(e)(ii) of the SDWA, which identifies both Point-of-Entry (POE) and Point-of-Use (POU) treatment units as options for compliance technologies. The SDWA identifies requirements that must be met when POU or POE units are used by a water system to comply with an NPDWR. Section 1412(b)(4)(e)(ii) stipulates that ''point-of-entry and point-of-use treatment units shall be owned, controlled, and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the MCL or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems.'' Other conditions in this section of the SDWA include the following: ''If the American National Standards Institute has issued product standards applicable to a specific type of POE or POU treatment unit, individual units of that type shall not be accepted for compliance with a MCL or treatment technique unless they are independently certified in accordance with such standards.''

In order to list POU treatment units as compliance technologies, EPA had to withdraw the part of § 141.101 that prohibited POU devices being used to comply with an MCL. To this end, a final rule was published in the **Federal Register** on June 11, 1998 (EPA 1998g). For more details on POU and POE devices, see the supporting guidance document for the small system compliance technology lists (USEPA 1998f).

Public water systems are not allowed to use bottled water to comply with an MCL (63 FR 31932; June 11, 1998). Bottled water may only be used on a temporary basis to avoid unreasonable risks to health, *e.g.,* as negotiated with the State or other primacy agency as part of the compliance schedule period for an exemption or variance.

L. What Do I Need To Tell My Customers?

1. Consumer Confidence Reports

On August 19, 1998, EPA issued Subpart O, the final rule requiring community water systems to provide annual reports on the quality of water delivered to their customers (63 FR 44512). The first Consumer Confidence Reports (CCRs) were to be made available to customers by October 19, 1999, and now they are due each year by July 1 (§ 141.152(a)). In these reports, systems must provide, among other things, the levels and sources of all detected contaminants and a description of the potential health effects of any contaminant found at levels that violate EPA or State rules, as part of a broader description of the violation and efforts to remedy it. For MCL or treatment technique violations, specific ''health effects language'' in Appendix A of Subpart O must be included verbatim in the report. Today's rule updates the Appendix to include health effects language and ''likely source''

[10] Point-of-entry (POE) treatment units treat all of the water entering a household or other building, with the result being treated water from any tap. Point-of-use (POU) treatment units treat only the water at a particular tap or faucet, with the result being treated water at that one tap, with the other taps serving untreated water. POE and POU treatment units often use the same technological concepts employed in the analogous central treatment processes, the main difference being the much smaller scale of the device itself and the flows being treated.

information for uranium. This language is consistent both with previously published health effects language for other radionuclides and with the language now required by the Public Notification Rule. Table I–10 shows the health effects language required for the radionuclides for the purposes of CCR and public notification.

TABLE I–10.—STANDARD HEALTH EFFECTS LANGUAGE FOR CCR AND PUBLIC NOTIFICATION

Contaminant	Standard health effects language for CCR and public notification
Beta/photon emitters	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha Emitters	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined Radium (–226 & –228)	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

2. Public Notification

Sections 1414(c)(1) and (c)(2) of the SDWA, as amended in 1996, require that public water systems notify their customers when they are in violation of NPDWRs. In the case of the radionuclides NPDWRs, this only applies to community water systems. On May 4, 2000, EPA revised the minimum requirements that public water systems must meet for public notification of violations of EPA's drinking water standards and other situations that pose a risk to public health from the drinking water. These revisions were promulgated under the Public Notification Rule (PNR), under 40 CFR Part 141, Subpart Q. Water systems must begin to comply with the new regulations on October 31, 2000 (if they are in jurisdictions where the program is directly implemented by EPA), or on the date a primacy State adopts the new requirements (but not later than May 6, 2002). Until the effective date of the new requirements, water systems must continue to comply with the requirements under § 141.32. Subsequent EPA drinking water regulations that affect public notification requirements will amend the PNR as a part of each individual rulemaking.

Public notification of drinking water violations is an important part of the ''public right to know'' provisions of the 1996 Amendments to the Safe Drinking Water Act. The PNR sets the requirements that public water systems must follow regarding the form, manner, frequency, and content for public notifications. These requirements apply to owners and operators of, in the case of the radionuclides NPDWRs, community water systems. The PNR requires that any regulated system notify its customers when: (1) A violation of a NPDWR occurs; (2) the system obtains a variance or an exemption from a NPDWR; or (3) the system is facing another situation posing a significant risk to public health.

Depending on the severity of the situation, water suppliers have from 24 hours to one year to notify their customers after a violation occurs. EPA specifies three categories, or tiers, of public notification. Depending under which tier a violation situation falls, water systems have different amounts of time to distribute and ways to deliver the notice:

- Immediate Notice (Tier 1): Any time a situation occurs where there is the potential for human health to be immediately impacted, water suppliers have 24 hours to notify people who may drink the water of the situation. Water suppliers must use media outlets such as television, radio, and newspapers, post their notice in public places, or personally deliver a notice to their customers in these situations.
- Notice ''as soon as possible'' (Tier 2): Any time a water system provides water with levels of a contaminant that exceed EPA or State standards or that hasn't been treated properly, but that does not pose an immediate risk to human health, the water system must notify its customers as soon as possible, but within 30 days of the violation. Notice may be provided via the media, posting, or through the mail.
- Annual Notice (Tier 3): When water systems violate a drinking water standard that does not have a direct impact on human health (for example, failing to take a required sample on time) the water supplier has up to a year to provide a notice of this situation to its customers. The extra time gives water suppliers the opportunity to consolidate these notices and send them with annual water quality reports (consumer confidence reports (CCR)), if the CCR meets the PNR timing, content, and distribution requirements.

The PNR lists the currently regulated radionuclides (combined radium-226 and radium-228, gross alpha, and beta particle and photon radioactivity) as being subject to ''Tier 2'' public notice requirements for MCL violations and ''Tier 3'' public notice requirements for violations of the monitoring and testing procedure requirements. Today's rule does not change this designation for the currently regulated radionuclides and adds uranium to the list of contaminants subject to Tier 2 requirements for MCL violations and Tier 3 requirements for violations of the monitoring and testing procedure requirements.

The elements to be included in each public notice are specified under § 141.205(a). All notices must include:

- A description of the violation that occurred, including the potential health effects (as specified in appendix B to subpart Q for MCL violations and the standard language under § 141.205(d)(2) for monitoring violations);
- The population at risk and if alternate water supplies need to be used;
- What the water system is doing to correct the problem;
- Actions consumers can take;
- When the violation occurred and when the system expects it to be resolved;
- How to contact the water system for more information; and
- Standard language encouraging broader distribution of the notice.

The standard health effects language used for public notification is the same as that for CCR, which is provided in Table I–10.

The public notice requirements under 40 CFR 141.203(b)(1) are such that the public water system must provide a Tier 2 public notice to persons served as soon as practical, but no later than 30 days after the system learns of the violation. Posted notices are required to remain in place for as long as the

violation or situation persists, but in no case for less than seven days, even if the violation or situation is resolved. The PNR under § 141.203(b)(2) also requires the public water system to repeat the notice every three months for as long as the violation persists. In contrast, the current rule requires a newspaper notice within 14 days, a notice mailed to all bill-payers within forty-five days, and a repeat notice mailed every three months thereafter until the violation is resolved.

The public notification requirement gives the primacy agency discretion, in appropriate circumstances, to extend the time period allowed for the Tier 2 notice from 30 days to up to three months for the initial notice and to allow repeat notice less frequently than every three months (but no less than once per year). Permission must be granted in writing. Although the discretion given to the primacy agency is fairly broad, the rule specifically disallows extensions of the 30-day deadline for the initial public notice for any unresolved violation. The PNR also does not allow primacy agencies to establish regulations or policies that automatically give ''across-the-board'' extensions or reductions in the repeat notice frequency for all the other violations.

For the most up-to-date version of the CCR and PNR tables that will be published in the July edition of the Code of Federal Regulations (appendix A to subpart O, and appendices A and B to subpart Q of 40 CFR part 141), visit EPA's Office of Ground Water and Drinking Water's website at ''http://www.epa.gov/safewater/tables.html.'' These on-line tables incorporate changes on an on-going basis.

M. Can My Water System Get a Variance or an Exemption From an MCL Under Today's Rule?

There are two kinds of variances applicable to public water systems: ''regular variances,'' which are usually referred to simply as ''variances,'' and ''small systems variances.'' The currently regulated radionuclides are already subject to the provisions for variances and exemptions and nothing in today's rule changes these provisions. The regular variances and exemptions provisions will be discussed later in this section.

As discussed in the NODA, the ''Small Systems Compliance Technology List'' (SSCTL) for combined radium-226 and -228, gross alpha particle activity, and beta particle/photon emitter radioactivity was published in the **Federal Register** on August 6, 1998 (63 FR 42032), as required by the amended SDWA. The SSCTL list for uranium was published for comment in the radionuclides NODA.

The 1996 SDWA identifies three categories of small drinking water systems, those serving populations between 25–500, 501–3,300, and 3,301–10,000. In addition to BAT determinations, the SDWA directs EPA to make technology assessments for each of the three small system size categories in all future regulations establishing an MCL or treatment technique. Two classes of small systems technologies are identified for future NPDWRs: small system compliance technologies and small system variance technologies.

Small system compliance technologies (''compliance technologies'') may be listed for NPDWRs that promulgate MCLs or treatment techniques. In the case of an MCL, ''compliance technology'' refers to a technology or other means that is affordable for the appropriate small systems (if applicable) and that achieves compliance. Possible compliance technologies include packaged or modular systems and point-of-entry (POE) or point-of-use (POU) treatment units, as described previously.

Small system variance technologies (''variance technologies'') are only specified for those system size/source water quality combinations for which no technology meets all of the criteria for listing as a compliance technology (section 1412(b)(15)(A)). Thus, the listing of a compliance technology for a size category/source water combination prohibits the listing of variance technologies for that combination. While variance technologies may not achieve compliance with the MCL or treatment technique requirement, they must achieve the maximum reduction that is affordable considering the size of the system and the quality of the source water. Variance technologies must also achieve a level of contaminant reduction that is ''protective of public health'' (section 1412(b)(15)(B)). The process for determining small system compliance technologies and small system variance technologies is described in more detail in the guidance document, ''Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996'' (USEPA 1998f).

In the case of the currently regulated radionuclides, *i.e.,* combined radium-226 and -228, gross alpha particle activity, and total beta particle and photon radioactivity, there are no variance technologies allowable since the SDWA (section 1415(e)(6)(A)) specifically prohibits small system variances for any MCL or treatment technique which was promulgated prior to January 1, 1986. The Variance and Exemption Rule describes EPA's interpretation of this section in more detail (see 63 FR 19442; April 20, 1998).

Stakeholders provided input regarding the small system compliance technologies for combined radium-226 and -228, gross alpha emitters, and beta particle and photon radioactivity, and uranium that are listed in section I.H. The small system compliance technologies for the radionuclides regulated since 1976 were listed and described in the **Federal Register** on August 6, 1998 (63 FR 42032) and in an accompanying guidance manual (EPA 1998b). Small systems compliance technologies for uranium were evaluated subsequent to the 1998 list, and presented in the Small Systems Compliance Technology List for the Radionuclides Rule (USEPA 1999a). Small systems compliance technologies for uranium were evaluated in terms of each technology's removal capabilities, contaminant concentration applicability ranges, other water quality concerns, treatment costs, and operational/maintenance requirements. This list was published for comment in the April 21, 2000, Notice of Data Availability (USEPA 2000e). No comments were received.

Small system compliance technology lists are technology specific, but not product (manufacturer) specific. Product specific lists were determined to be inappropriate due to the potential resource intensiveness involved. Information on specific products will be available through another mechanism. EPA's Office of Research and Development has a pilot project under the Environmental Technology Verification (ETV) Program to provide treatment system purchasers with performance data from independent third parties.

The currently regulated radionuclides are already subject to the provisions for ''regular variances'' and exemptions. Uranium will be subject to the same provisions. Variances generally allow a system to provide drinking water that may be above the maximum contaminant level on the condition that the quality of the drinking water is still protective of public health. The SDWA (1415(a)) requires that any system obtaining a variance must enter into a compliance schedule with the primacy entity as a condition of the variance. An exemption, on the other hand, is intended to allow a system with compelling circumstances an extension of time before the system must comply with applicable SDWA requirements.

An exemption is limited to three years after the otherwise applicable compliance date, although extensions up to a total of six additional years may be available to small systems under certain conditions.

N. How Were Stakeholders Involved in the Development of This Rule?

EPA has consulted with a broad range of stakeholders and technical experts. EPA held a two-day stakeholders meeting on the radionuclides rule in Washington, DC on December 11–12, 1997. The meeting was announced in the **Federal Register** and open to any one interested in attending in person or by phone. During the meeting, EPA discussed a range of regulation development issues with the stakeholders, including the statutory requirements, the stipulated agreement, MCLs for each of the radionuclides, new scientific information on health effects, occurrence, analytical methods, treatment technologies, and the current and proposed monitoring framework. The presentations generated useful discussion and provided feedback to EPA regarding technical issues, stakeholder concerns and possible regulatory options. Participants in EPA's stakeholder meeting included representatives from the Association of Metropolitan Water Agencies (AMWA), Association of State Drinking Water Administrators (ASDWA), American Water Works Association (AWWA), National Association of Water Companies, State departments of environmental protection, State health department, State drinking water programs, Federal agencies, environmental groups, and local water systems. The public docket for this final rulemaking contains the meeting summary for EPA's stakeholder meeting on radionuclides in drinking water.

In addition, during the regulation development process, EPA gave presentations on the radionuclides regulation at meetings of the AWWA, ASDWA and EPA State/Regional conferences, and met with States from Regions 2, 3, 7, and 8 regarding radionuclides issues and the upcoming final rule. EPA participated in AWWA's Technical Advisory Workgroup (TAW), which meets annually to discuss technical issues including treatment, occurrence, and health risks. State public health departments and drinking water program representatives of both large and small drinking water districts participated in TAW meetings. EPA also held frequent conference calls with interested State drinking water programs about the development of the rule. In addition, EPA made presentations and received input at Tribal meetings in Nevada, Alaska, and California. Finally, EPA held a one-day meeting with associations that represent State, county, and local government elected officials on May 30, 2000, and discussed five upcoming drinking water regulations, including radionuclides. See section V.I ''Executive Order 13132'' for more information about the meeting.

The Agency utilized the feedback received from the stakeholders during all these meetings in developing today's final rule.

O. What Financial Assistance Is Available for Complying With This Rule?

Various Federal programs exist to provide financial assistance to State, local, and Tribal governments to administer and comply with this and other drinking water rules. The Federal government provides funding to States and Tribes that have a primary enforcement responsibility for their drinking water programs through the Public Water Systems Supervision (PWSS) Grants program. Additional funding is available from other programs administered either by EPA or other Federal agencies. These include the Drinking Water State Revolving Fund (DWSRF) and Housing and Urban Development's Community Development Block Grant Program. For example, the SDWA authorizes the Administrator of the EPA to award capitalization grants to States, which in turn can provide low cost loans and other types of assistance to eligible public water systems. The DWSRF assists public water systems with financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements. Each State has considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs. States may also, on a matching basis, use up to ten percent of their DWSRF allotments for each fiscal year to assist in running the State drinking water program.

Under PWSS Program Assistance Grants, the Administrator may make grants to States to carry out public water system supervision programs. States may use these funds to develop primacy programs. States may ''contract'' with other State agencies to assist in the development or implementation of their primacy program. However, States may not use program assistance grant funds to contract with regulated entities (*i.e.,* water systems). PWSS Grants may be used by States to set-up and administer a State program which includes such activities as: public education, testing, training, technical assistance, developing and administering a remediation grant and loan or incentive program (excludes the actual grant or loan funds), or other regulatory or non-regulatory measures.

P. How Are the Radionuclides MCLs Used Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)?

The framework for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) includes the expectation that contaminated ground waters will be returned to beneficial uses whenever practicable (see § 300.430(a)(1)(iii)(F)). Section 121(d) of CERCLA requires on-site remedial actions to attain MCLGs and water quality standards under CWA when relevant and appropriate. The NCP (§ 300.430(e)(2)(i)(B) and (C) clarify that MCLs or non-zero MCLGs established under SDWA will typically be considered relevant and appropriate cleanup levels for ground waters that are a current or potential source of drinking water.

EPA's guidance on complying with these requirements are contained in an EPA document entitled ''Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites, Final Guidance,'' (October 1996. OSWER Directive 9283.1–12). A discussion of the flexibility of EPA's guidance under CERCLA on the attainment of drinking waters in ground water is contained in section 2.6 ''Areas of Flexibility in Cleanup Approach'' (pp 15–19) of the 1996 OSWER directive. The discussion in the 1996 OSWER directive regarding monitored natural attenuation and determining beneficial uses of groundwater has been updated by the following EPA guidance documents: (1) ''Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites'' (April 1999. Final OSWER Directive 9200.4–17P), and (2) ''The Role of CSGWPPs in EPA Remediation Programs'' (April 4, 1997, OSWER Directive 9283.1–09).

Q. What Is the Effective Date and Compliance Date for the Rule?

Much of today's rule will involve retaining current elements of the radionuclides NPDWR. Those portions of the final rule that are unaffected by the upcoming regulatory changes are

already in effect. MCLs for gross alpha, beta particle and photon radioactivity, and combined radium-226 and -228 will be unchanged and are already in effect. Regarding water systems that are currently out of compliance with the existing NPDWRs for gross alpha, combined radium-226 and -228, and/or beta particle and photon radioactivity, States with primacy and EPA will renegotiate, as necessary, enforcement actions that put systems on compliance schedules as expeditiously as possible.

Under the Safe Drinking Water Act, the final rule becomes effective three years after promulgation December 8, 2003. Under the Standard Monitoring Framework (SMF), systems usually have three years to complete the initial monitoring cycle of four consecutive quarterly samples. In order to synchronize the monitoring periods for radionuclides with the Standardized Monitoring Framework and alleviate potential laboratory capacity problems, the end of the initial monitoring period will be December 31, 2007. EPA expects that States will phase-in monitoring over this period and determine compliance upon completion of each water system's initial monitoring schedule. For example, the fraction of water systems that begin monitoring in the first year would have compliance determinations made at the end of the first year, based upon the average results of the four quarterly samples. New monitoring includes initial monitoring for uranium, the new monitoring requirements for radium-228, and new initial monitoring under the requirements for entry points. Data grandfathering discretion for existing monitoring data to determine future monitoring schedules is discussed in sections I.D and I.J. Combined radium-226 and radium-228 MCL violations which result from the new requirement for separate radium-228 monitoring will be treated as ''new violations'' and will be on the same schedule as other new violations (e.g. uranium). Water systems with existing monitoring data for radium-228 and uranium that demonstrate that they are not in compliance with the MCL will be out of compliance on the effective date of the rule.

R. Has EPA Considered Laboratory Approval/Certification and Laboratory Capacity?

The ultimate effectiveness of the approved regulations depends upon the ability of laboratories to reliably analyze contaminants at relatively low levels. The Drinking Water Laboratory Certification Program is intended to ensure that approved drinking water laboratories analyze regulated drinking water contaminants within acceptable limits of performance. The Certification Program is managed through a cooperative effort between EPA's Office of Ground Water and Drinking Water and the Office of Research and Development. The program stipulates that laboratories analyzing drinking water compliance samples must be certified by U.S. EPA or the State. The program also requires that certified laboratories must analyze Proficiency Testing (PT) samples [formerly called Performance Evaluation (PE) samples], use approved methods and pass periodic on-site audits.

1. Laboratory Approval/Certification

As discussed in the April 21, 2000 NODA, EPA recently privatized the PT program, including the Water Supply (WS) studies. The decision to privatize the PT studies programs was announced in the **Federal Register** on June 12, 1997 (62 FR 32112). The notice indicated that in the future the EPA would issue standards for the operation of the program, while the National Institute of Standards and Technology (NIST) would develop standards for private sector PT suppliers and would evaluate and accredit PT suppliers. The private sector would develop and manufacture PT samples and conduct PT studies.

2. Laboratory Capacity: Laboratory Certification and PT Studies

The availability of laboratories is also dependent on laboratory certification efforts in the individual States with regulatory authority for their drinking water programs. Until June of 1999, a major component of many of these certification programs was their continued participation in the current EPA Water Supply (WS) PT program. As discussed previously, NIST is administering the program to accredit a provider for PT samples for radionuclides. States also have the option of approving their own PT sample providers. The extent to which the PT program will affect short-term and long-term laboratory capacity for radionuclides will be assessed after PT providers are approved by NIST or the States. However, EPA anticipates that radionuclide PT samples will be available in time to allow for laboratory certification before compliance monitoring is required.

3. Summary of Major Comments Regarding Laboratory Capacity and EPA Responses

In the April 21, 2000 NODA, the Agency stated that it is difficult to ascertain how and if externalization of the PT program will affect radiochemical laboratory capacity and the cost of radiochemical analyses. In the absence of definitive information, the Agency solicited public comments on this subject. The Agency stated in the NODA that it recognized that PT externalization may be an implementation issue for at least three reasons:

- The externalization of the radionuclides PT studies program may cause short-term disruption in laboratory accreditation;
- Requiring NTNCWSs to monitor under the Standard Monitoring Framework will add approximately 20,000 systems to the universe of systems that are already required to monitor;
- And the radon rule will be implemented at approximately the same time as the radionuclides rule.

To alleviate potential laboratory capacity problems that could result, the Agency solicited comments on whether or not to extend the initial monitoring period to four years (instead of three years). Of the 70 commenters who provided comments on the radionuclides NODA, 15 commented on laboratory externalization and its related issues. The major concerns raised by the commenters and the Agency's responses to them are provided below.

a. Laboratory Certification, Availability of PT Samples and Costs of PT Samples: Several commenters noted there is currently no certification process through which laboratories can receive State certification for radionuclide analyses due to the lack of availability of PT samples. Some commenters noted that only one PT provider has volunteered to provide PT samples for radionuclides and based on their inquiries, PT sample costs are too high. Commenters believe the high costs of PT samples will affect the resulting costs of the radiochemical analyses (by increasing operational costs). Several commenters felt EPA should reconsider the privatization of PT program. Commenters stated that EPA must ensure that an adequate number of laboratories are available to perform accurate measurements and provide data of good quality for compliance and enforcement efforts.

After evaluating public comment, EPA published its final decision about the externalization of the PT Program in the June 12, 1997 final notice (62 FR 32112). Currently, the PT program for radionuclides is being privatized, *i.e.,* operated by an independent third party provider accredited by the National Institute of Standards and Technology (NIST). EPA believes this program will

ensure the continued viability of the existing PT programs, with EPA maintaining oversight. NIST is in the process of approving a provider for PT samples for radionuclides. To alleviate concerns about the costs of PT samples, States have the option to approve PT sample provider(s) themselves. The Agency anticipates that radionuclide PT samples will be available in time to allow for laboratory certification before compliance monitoring is required.

b. Laboratory Capacity: Commenters stressed the impact that the externalization of the PT program, this regulation and the radon regulation would have on laboratory capacity and workloads of the laboratories. Some commenters felt the externalization and high costs of PT samples would decrease the number of radiochemical laboratories and in affect decrease laboratory capacity. Also, commenters felt that if EPA required 48–72 hour turn around times for gross alpha (to catch the alpha particle contribution from radium-224) or monitoring of regulated radionuclides by NTNCWSs, radiochemical laboratories would not be able to address the additional demand for analytical services. EPA agrees that laboratory capacity could be effected by the externalization of the PT program. In an effort to alleviate potential laboratory capacity problems, EPA has agreed to extend the initial monitoring period from three to four years. Extending the initial monitoring period will spread the burden on the laboratories as well as the costs associated with the monitoring. In addition, EPA is allowing systems to grandfather existing data on currently regulated radionuclides and composite under certain circumstances (for more information on compositing and grandfathering, see section I.J. In addition, because EPA has decided not to require a 48 to 72 hour turn around time for gross alpha particle activity nor to regulate NTNCWSs, the potential burden on laboratory capacity should be alleviated.

II. Statutory Authority and Regulatory Background

A. What Is the Legal Authority for Setting National Primary Drinking Water Regulations (NPDWRs)?

The SDWA requires EPA to promulgate regulations pertaining to public water systems. Specifically, section 1412(b)(4) requires that EPA set a health-based goal called a maximum contaminant level goal (MCLG) as a target for setting an enforceable standard, the maximum contaminant level (MCL). The MCLG is determined by studies of the health effects of contaminants on animals under laboratory conditions or humans via epidemiological studies. The MCLG is the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. The Safe Drinking Water Act requires EPA to set the MCL as close to the MCLG as is ''feasible,'' which is defined as ''feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration) * * *'' [section 1412(b)(4)(D)]. Additionally, section 1412(b)(6) provides that if the Administrator determines that at the feasible level, the benefits do not justify the costs, EPA can set a standard which maximizes the health risk reduction benefits at a cost that is justified by the benefits. In today's rule, EPA is invoking these authorities with respect to the uranium standard. Section 1412 (b)(9) requires that any revisions to NPDWRs maintain or provide for greater protection of the health of persons.

B. Is EPA Required To Finalize the 1991 Radionuclides Proposal?

The SDWA requires that EPA issue MCLGs for the currently regulated radionuclides in drinking water and establish a NPDWR for uranium. When EPA failed to finalize the 1991 proposal, a citizen group brought suit to establish a schedule for finalizing the appropriate portions of the proposal. Following the 1996 amendments to the SDWA, the plaintiffs and EPA agreed on a schedule for completing the revisions to the radionuclides rulemaking by either finalizing applicable parts of the 1991 proposal or affirming the validity of the current rule with an explanation of why the current rule is preferable. With respect to uranium, EPA has no current rule, and is required to finalize a uranium regulation on the same schedule as gross alpha particle activity, combined radium-226 and -228, and beta particle and photon radioactivity. This agreement was reflected in a stipulation of the parties in litigation in U.S. District Court in Oregon.

III. Rule Implementation

A. What Are the Requirements for Primacy?

This section describes the regulations and other procedures and policies primacy entities have to adopt, or have in place, to implement today's final rule. States must continue to meet all other conditions of primacy in 40 CFR part 142.

Section 1413 of the SDWA establishes requirements that primacy entities (States or Indian Tribes) must meet to maintain primary enforcement responsibility (primacy) for its public water systems. These include:

(1) Adopting drinking water regulations that are no less stringent than Federal NPDWRs in effect under sections 1412(a) and 1412(b) of the Act,

(2) Adopting and implementing adequate procedures for enforcement,

(3) Keeping records and making reports available on activities that EPA requires by regulation,

(4) Issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by sections 1415 and 1416, and

(5) Adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the Public Water Supply Supervision Program, as authorized under section 1413 of the Act. In addition to adopting the basic primacy requirements, States may be required to adopt special primacy provisions pertaining to a specific regulation. These regulation-specific provisions may be necessary where implementation of the NPDWR involves activities beyond those in the generic rule. States are required by § 142.12 to include these regulation-specific provisions in an application for approval of their program revisions. These State primacy requirements apply to today's final rule, along with the special primacy requirements discussed below.

To implement today's final rule, States are required to adopt revisions to § 141.25—Analytical methods for radioactivity; § 141.26—Monitoring frequency and compliance requirements for radioactivity in community water systems; appendix A to subpart O—Regulated contaminants; appendix A to subpart Q—NPDWR violations and other situations requiring public notice; appendix B to subpart Q—Standard health effects language for public notification; § 142.16—Special primacy requirements; and new requirements § 141.55—Maximum contaminant level goals for radionuclides; and § 141.66—Maximum contaminant levels for radionuclides.

B. What Are the Special Primacy Requirements?

In addition to adopting drinking water regulations at least as stringent as the

Federal regulations listed above, EPA requires that States adopt certain additional provisions related to this regulation to have their program revision application approved by EPA.

The State's request for approval must contain the following:

(1) If a State chooses to use grandfathered data in the manner described in § 141.26(a)(2)(ii)(C) of this chapter, then the State must describe the procedures and criteria which it will use to make these determinations (whether distribution system or entry point sampling points are used).

(i) The decision criteria that the State will use to determine that data collected in the distribution system are representative of the drinking water supplied from each entry point to the distribution system. These determinations must consider:

(A) All previous monitoring data.

(B) The variation in reported activity levels.

(C) Other factors affecting the representativeness of the data (*e.g.* geology).

(2) A monitoring plan by which the State will assure all systems complete the required monitoring within the regulatory deadlines. States may update their existing monitoring plan or use the same monitoring plan submitted for the requirements in § 142.16(e)(5) under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (*i.e.* the Phase II/V Rules). States may note in their application any revision to an existing monitoring plan or note that the same monitoring plan will be used. The State must demonstrate that the monitoring plan is enforceable under State law.

There are many ways that a State may satisfy the special primacy requirements. The Agency intends to issue guidance regarding ways to satisfy these requirements, but States have the flexibility to develop individual programs appropriate for the circumstances within each State.

C. What Are the Requirements for Record Keeping?

The current regulations in § 142.14 require States with primacy enforcement responsibility to keep records of analytical results to determine compliance, system inventories, sanitary surveys, State approvals, vulnerability determinations, monitoring requirements, monitoring frequency decisions, enforcement actions, and the issuance of variances and exemptions. These records include:

(1) Any determination of a system's vulnerability to contamination by beta and photon emitters (§ 142.14(d)(4)); and

(2) Any determination that a system can reduce or increase monitoring frequency for gross alpha particle activity, gross beta particle and photon radioactivity, uranium, radium-226 and 228. The records must include the basis for the decision, and the repeat monitoring frequency (§ 142.14(d)(5)).

Since these requirements are generally included in § 142.14(d)(4) and (5), revisions to the rule are not necessary.

D. What Are the Requirements for Reporting?

Currently, States must report to EPA information under § 142.15 regarding violations, variances and exemptions, enforcement actions and general operations of State public water supply programs. These reporting requirements remain unchanged and apply to the radionuclides as with any other regulated contaminant.

E. When Does a State Have To Apply for Primacy?

The State must submit a request for approval of program revisions that adopts the uranium MCL, implementing regulations, and other revisions promulgated in today's final rulemaking within two years of the publication date of today's rule unless EPA approves an extension per § 142.12(b). To maintain primacy for the Public Water Supply Supervision (PWSS) Program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt today's rule. Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. To obtain interim primacy, a State must have primacy with respect to each existing NPDWR. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

F. What Are Tribes Required To Do Under This Regulation?

Currently, no federally recognized Indian tribes have primacy to enforce any of the drinking water regulations. EPA Regions implement the rules for all Tribes under section 1451(a)(1) of SDWA. Tribes would need to submit a primacy application in order to have the authority to implement the radionuclides NPDWRs. Tribes with primacy for drinking water programs are eligible for grants and contract assistance (section 1451(a)(3)). Tribes are also eligible for grants under the Drinking Water State Revolving Fund Tribal set aside grant program authorized by SDWA section 1452(i) for public water system expenditures.

IV. Economic Analyses

Under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of the finalized changes to the Radionuclides NPDWRs and submit the impact analysis to the Office of Management and Budget (OMB) as part of the rulemaking process. EPA has prepared an Economic Analysis (USEPA 2000g) to comply with the requirements of this Order. This section provides a summary of the information from the economic analysis regarding estimates of the costs and benefits related to the changes to the existing radionuclides NPDWRs and the uranium NPDWR being finalized today. The economic analysis is an update to the Health Risk Reduction and Cost Analysis (USEPA 2000f) announced in the NODA (USEPA 2000e) and summarized in the NODA's Technical Support Document (USEPA 2000h). The updates to the economic analysis reflect comments received on the NODA. This section will not repeat all of the material presented in the NODA and in some cases will refer back to that notice. Changes made in response to comments will be highlighted.

A. Estimates of Costs and Benefits for Community Water Systems

Two requirements under today's rule are expected to incur costs and benefits: the adoption of the uranium MCL of 30 μg/L and the requirement for separate monitoring of radium-228, which is expected to result in additional systems in violation of the combined radium-226/-228 MCL of 5 pCi/L. EPA estimates that these requirements will result in annual compliance costs of $81 million in 1999 dollars, with $25 million of this annual cost being due to mitigation of systems newly in violation of the radium-226/-228 standard due to new monitoring requirements, $51 million due to mitigation of systems in violation of a uranium MCL of 30 μg/L, $ 4.9 million due to monitoring and reporting by CWSs, and $ 0.06 million due to new implementation costs for States. While these represent new compliance costs, most water systems will experience reduced compliance costs in the long-term because of reduced monitoring frequency for systems with low contaminant levels under the Standardized Monitoring Framework. The basis for these estimates, and

alternate cost estimates using different assumptions are described later in this section.

State implementation and CWS start up costs are estimated to be $10 million annually for the first three years. Of this $10 million, approximately $ 0.25 million are State start up costs with the remainder being comprised by CWS start up costs (USEPA 2000d). Over the first twenty-three year period, the implementation costs for States and CWSs are estimated to be $ 4.9 million annually (included in the annual compliance costs reported previously). These costs include preparation of the primacy application, training, planning, and other compliance preparations, and monitoring and reporting costs for PWSs.

The treatment/non-treatment compliance unit costs and national costing assumptions used in the Economic Analysis (USEPA 2000g) are standard and are consistent with those used for estimating the costs of compliance the other recently proposed drinking water rules. The updated Technologies and Costs document (USEPA 2000i) provides unit capital and ''operations & maintenance'' costs for water treatment plants, including residuals disposal costs. Typical model small system treatment costs ranged from $ 0.25 to $ 3 per kilogallon of water treated, with associated annual per household costs ranging from $20 to $250, with the value depending upon water system size and water quality. Large system model unit costs ranged from $0.17 to $ 0.28 per kilogallon treated, with associated annual per household costs ranging from $14 to $23.

For various reasons (see the NODA's Technical Support Document for details, USEPA 2000h), the estimate of monetized benefits associated with compliance of today's rule are more uncertain than the costs estimates. In the case of the requirement for separate monitoring for radium-228, cancer risk reduction benefits of $1.7 million annually are expected. While the net benefits for this monitoring change are expected to be negative, this monitoring change is essential for enforcing the combined radium-226/-228 standard. In the case of the uranium standard, the benefits are difficult to monetize, since the number of kidney toxicity cases avoided cannot be estimated using current risk models. For this reason, the uranium kidney toxicity benefits are considered to be ''non-quantified benefits'' for this rule. As discussed in detail in part D of section I (''Rationale for the Final Uranium MCL''), we consider these non-quantified kidney benefits to be a significant part of this assessment of costs and benefits.

The uranium cancer risk reduction benefits are estimated to be $3 million annually, which, we reiterate, do not include the non-quantified kidney toxicity risk reduction benefits. As discussed in the NODA, there are significant uncertainties associated with any estimate of drinking water benefits, including uncertainties in the unit risks used to estimate risk reductions and the various health endpoints that cannot yet be fully quantifitied.

Other non-quantified benefits include those related to the technologies used to remove radium and uranium from ground water (*e.g.,* water softening technologies like ion exchange, lime softening, and membrane softening and iron removal technologies like green sand filtration and oxidation/filtration). EPA does not have enough information to estimate these benefits, but believes that they could be significant. Examples of benefits related to water softening include reductions in excessive calcium and manganese carbonate scaling in distribution systems, water heaters, and boilers and reductions in soap and detergent use. Examples of benefits related to iron removal include improvements in color and taste and reduction in staining of clothes, sinks, and basins.

B. Background

1. Overview of the 1991 Economic Analysis

Many of the options proposed in 1991 economic analysis are not being finalized today. Today's discussion will focus on the analysis of costs and benefits of the options that are being finalized: a final uranium standard and separate monitoring for radium-228. The 1991 economic analysis (USEPA 1991) estimated the annual cost of compliance with a uranium MCL of 20 µg/L to be $55 million, affecting approximately 1,500 systems, the vast majority of them being small systems. The 1991 estimate of the annual cost of compliance with a uranium MCL of 40 µg/L was $23 million. The current estimate of the cost of compliance with a uranium MCL of 20 µg/L is $93 million, impacting 900 systems, most of them small.

2. Summary of the Current Estimates of Risk Reductions, Benefits, and Costs

Table IV–1 shows the summarized results for EPA's analysis of risk reductions, benefits valuations, and costs of compliance (see USEPA 2000g for more detailed break-downs of the risk reductions, costs, and benefits by system size). The risk reductions and cost estimates are based on the estimated range of numbers of community water systems predicted to be out of compliance with the uranium MCL of 30 µg/L and the systems that are predicted to be out of compliance with the current combined radium-226/-228 standard of 5 pCi/L because of the new requirement for separate radium-228 monitoring. The best estimate values shown are the midpoints from ranges that are based on the two occurrence model methodologies described in the NODA (USEPA 2000e), the ''direct proportions'' and ''lognormal model'' approaches. As described in the NODA, these two approaches are expected to serve as ''low-end'' and ''high-end'' occurrence estimates, respectively.

Eliminating the combined radium-226/-228 monitoring deficiency [11] is predicted to lead to 295 (range of 270 to 320) systems out of compliance with an MCL of 5 pCi/L, affecting 420,000 persons (range 380,000 to 460,000). A uranium MCL of 30 µg/L is predicted to impact 500 systems (range 400 to 590), affecting 620,000 persons (range 130,000 to 1,100,000). The estimates of occurrence and risk reductions for a uranium MCL of 30 µg/L are based on the assumption that the activity-to-mass ratio in drinking water is 0.9 µg/pCi. Based on the available information, the average activity-to-mass ratio for the various uranium isotopes in drinking water typically varies from 0.7 to 1.5 pCi/µg.

The estimated cancer morbidity risk reduction for the option addressing the combined radium monitoring deficiency is 0.4 (0.3 to 0.5) cancer cases avoided annually, with an associated annual monetized benefit of $1.7 million (range of $1.2 to $2.2 million). The annual cancer morbidity risk reduction estimated for a uranium MCL of 30 µg/L is 0.9 cases/year (range 0.1 to 1.6). The associated annual monetized benefit related to uranium cancer risk reduction is $3 million (range from $0.2 to $6 million) [12]. The risk reductions and

[11] The monitoring deficiency is corrected by requiring the separate analysis of radium-228 for systems with gross alpha levels below 5 pCi/L and radium-226 levels below 3 pCi/L.

[12] The Agency has agreed to consider the July 27, 2000 recommendations of its Science Advisory Board (SAB) concerning discounting of benefits in future drinking water regulations. In particular, the SAB recommended that quantitative adjustments to benefits be considered with respect to timing of risk (*e.g.,* consideration of a lag or latency period before the resulting cancer fatality) and income growth. The SAB also recommended that other possible adjustments to benefits estimates be considered in a qualitative manner. We have not made any such adjustments to the benefits associated with today's rule since the principal benefits are non-quantifiable (avoidance of kidney toxicity due to reductions in exposure to uranium). We do not

benefits shown for uranium do not include those related to kidney toxicity, which are non-quantifiable (cases avoided cannot be estimated). As discussed in section I.D.2 of today's final rule, these non-quantifiable benefits are projected to be preventing a series of adverse affects on the functioning of the kidney such as proteinuria (*e.g.,* reabsorption deficiency or leakage of albumin), that could ultimately lead to a more widespread breakdown in kidney tubular function. Such effects on tubular function would be manifested by an impaired ability of the kidneys to filter and reabsorb nutrients and to excrete urine.

Annual compliance costs are estimated to be $25 million (range $16 to $35 million) for the option addressing the combined radium monitoring deficiencies. Annual compliance costs for the uranium NPDWR are predicted to be $51 million (range from $9 to $92 million). In addition to these mitigation related compliance costs, water systems are expected to incur $4.9 million annually in monitoring and reporting costs. As demonstrated by this analysis the estimated range of central-tendency annual compliance costs exceed the ranges of central-tendency annual monetized benefits for both provisions finalized today.

TABLE IV–1.—SUMMARY OF COSTS AND BENEFITS FOR COMMUNITY WATER SYSTEMS PREDICTED TO BE IMPACTED BY THE REGULATORY OPTIONS BEING CONSIDERED FOR FINALIZATION

Options	Numbers of systems impacted [1] (population exposed above MCL)	Estimated lifetime radiogenic cancer morbidity risk at MCL [2, 3, 4]	Total cancer cases avoided annually (fatal cases)	Best-estimate value of avoided cancer cases, in millions of $/year)	Best-estimate of annual compliance costs, in millions of $/year)
Systems predicted to be impacted by corrections to the monitoring deficiencies for combined radium-226 and -228					
Eliminate combined radium monitoring deficiency.	295 systems (420 K persons).	1×10^{-4}	0.4 ..... (0.3)	1.7	25
Systems predicted to be out of compliance with proposed options for uranium MCL					
Uranium at 30 μg/L	500 systems (620 K persons).	1×10^{-4} (assumes 30 pCi/).	0.9 ..... (0.6) (Total Number of kidney toxicity cases cannot be accurately estimated, but expected to be substantial)	3.0 ..... Kidney toxicity benefits range from prevention of mild proteinurea to possible more serious impaired kidney tubular function	51

Notes: Compliance costs do not include monitoring and reporting costs, which comprise an additional $5 million annually. Ranges based on directly proportional versus lognormal distribution approach.

[1] Compared to the initial baseline (*i.e.,* occurrence data are adjusted to eliminate existing MCL violations) for combined radium. Occurrence data is unadjusted for uranium options.

[2] 1×10 is equivalent to ''one in ten thousand'', EPA's usual upper limit of acceptable cancer incidence (morbidity) risk for contaminants in drinking water.

[3] These risk estimates are based on several simplifying assumptions and are only meant to be illustrative. The reported combined radium risk is based on an ''occurrence weighted average'' for radium-226 and radium-228 (2.3×10^{-5} per pCi/L). The ''best-estimate'' for a particular situation would depend on the actual levels of Radium226 and Radium228 that comprise the combined level of 5 pCi/L. Regarding uranium risks, since the individual uranium isotopes that make up naturally-occurring uranium have cancer morbidity risks that are similar in magnitude (6.4 to 7.1×10^{-11} per pCi), the assumptions about isotopic prevalence are not important. Here, we assumed that the simple average applied (3.83×10^{-6} per pCi/L).

[4] Kidney toxicity is not considered in this estimate of risk or monetized benefits.

3. Uncertainties in the Estimates of Benefits and Cost

The models used to estimate costs and benefits related to regulatory measures have uncertainty associated with the model inputs. The types and uncertainties of the various inputs and the uncertainty analyses for risks, benefits, and costs are qualitatively discussed in this section.

a. Uncertainties in Risk Reduction and Benefits Estimates

For each individual radionuclide, EPA developed a central-tendency risk coefficient that expresses the estimated probability that cancer will result in an exposed individual per unit of radionuclide activity (*e.g.,* per pCi/L) over the individual's lifetime (assumed to be 70 years). Two types of risks are considered, cancer morbidity, which refers to any incidence of cancer (fatal or non-fatal), and cancer mortality, which refers to a fatal cancer illness. For this analysis, we used the draft September 1999 risk coefficients developed as part of EPA's revisions to Federal Guidance Report 13 (FGR–13, EPA 1999e). FGR–13 compiled the results of several models predicting the cancer risks associated with radioactivity. The cancer sites considered in these models include the esophagus, stomach, colon, liver, lung, bone, skin, breast, ovary, bladder, kidney, thyroid, red marrow (leukemia), as well as residual impacts on all remaining cancer sites combined.

There are substantial uncertainties associated with the risk coefficients in FGR–13 (EPA 1999e): researchers estimate that some of the coefficients may change by a factor of more than 10 if plausible alternative models are used to predict risks. While the report does not bound the uncertainty for all radionuclides, it estimates that the central-tendency risk coefficients for uranium-234 and radium-226 may change by a factor of seven depending on the models employed to estimate

believe that adjustments to these monetized cancer avoidance benefits estimates for either timing or income growth would materially affect our benefits assessment or decisions resulting from overall consideration of the benefits and costs of the regulatory standard.

risk.[13] Ranges that reflect uncertainty and variability in the risk coefficients have been used to conduct a sensitivity analysis of risk reductions and benefits, the results of which are reported in Economics Analysis (USEPA 2000g).

Since the available occurrence data do not provide information on the contribution of individual radionuclides or isotopes to the total activities of gross alpha or uranium, there is uncertainty involved in the assumptions about isotopic ratios. These and other uncertainties related to occurrence information (*e.g.,* uncertainty in extending the NIRS database results to the national level) also contribute to uncertainty in the estimates of impacts. Other inputs that were used in the sensitivity analysis of risk reductions and benefits are the age- and gender-dependent distributions of water ingestion, which are used in estimating lifetime exposure, and the credible range for the ''value of a statistical life.''

b. Uncertainty in Compliance Cost Estimates

Regarding uncertainty in the compliance cost estimates, these estimates assume that most systems will install treatment to comply with the MCLs, while recent research suggests that water systems usually select compliance options like blending (combining water from multiple sources), developing new ground water wells, and purchasing water (USEPA 2000g). As discussed in the NODA, preliminary data (202 compliance actions from 14 States) on nitrate violations suggest that only around a quarter (25%) of those systems taking action in response to a nitrate violation installed treatment, while roughly a third developed a new well or wells. The remainder either modified the existing operations (10–15%), blended (15%), or purchased water (15–20%). Similar data for radium violations from the State of Illinois (77 compliance actions) indicate that around a quarter of systems taking action installed treatment, while the majority (50–55%) purchased water, with the remainder (20–25%) either installing a new well, blending, or stopping production from the contaminated well or wells. EPA will continue to gather information regarding the prevalence of treatment versus non-treatment options for compliance for other contaminants. At this time, this data is considered preliminary and will be used for comparisons only.

To evaluate the potential variability in the compliance cost estimates, EPA has performed a sensitivity analysis for uncertainties in the decision tree by varying the assumed percentages for the modeled compliance options. Since per system costs are much higher for very large systems, the assumptions used in the large water system size categories can be expected to dominate the variability in national costs. The sensitivity analysis results are reported in the Economic Analysis (USEPA 2000g).

4. Major Comments

Following is a summary of the major comments received on the analysis of costs and benefits for the finalization of the radionuclides rule.

a. Retention of radium-226/-228 MCL of 5 pCi/L: Several commenters suggested that the costs and benefits of compliance with the existing radium-226/-228 MCL should be included in the analysis of the costs and benefits of the finalization of today's rule, because ''systems currently in non-compliance with the combined radium MCL are in that situation because of EPA's proposed rule changes in 1991.'' EPA disagrees with this comment since all of MCLs for the currently regulated radionuclides, including radium-226/-228 have been fully enforceable since 1976. While some may argue that the radionuclides rules were ''National Interim Primary Drinking Water Regulations'' (NIPDWRs) between 1976 and 1986, NIPDWRs were fully enforceable. In addition, six years elapsed between the re-authorization of the Safe Drinking Water Act (1986), which finalized all NIPDWRs, and the 1991 proposal. Given the fact that 25 years have elapsed since this MCL became an enforceable standard, EPA believes that it is appropriate to consider only the costs and benefits of the changes that are being made in the current standards. In view of the fact that 25 years have elapsed since this MCL became an enforceable standard, EPA believes that is appropriate to consider only the costs and benefits of the changes that are made to the current radium standards as a cost of today's rule. EPA further believes that any costs incurred by facilities that are required to comply with the 1976 rule represent deferred costs that those facilities elected not to expend until now.[14]

b. Cost/Benefit Analysis Requirements: One commenter suggested that the analysis of costs and benefits, as presented in the Notice of Data Availability (USEPA 2000e) omitted some information required under section 1412(b)(4)(C) of the 1996 SDWA. EPA disagrees with this comment. All of the required information relevant to the analysis of costs and benefits for the options considered are found in the draft Health Risk Reduction and Cost Analysis (HRRCA, USEPA 2000f), which was announced by and described in the NODA. In the HRRCA, EPA did meet the requirements of the Safe Drinking Water Act for performing analyses of costs and benefits. For compliance with each regulatory option being considered, EPA updated the analysis supporting the 1991 radionuclides proposal, including estimates of quantifiable and non-quantifiable health risk reduction benefits, quantifiable and non-quantifiable health risk reduction benefits likely to occur from reductions in co-occurring contaminants (excluding those associated with compliance with other proposed or promulgated regulations), quantifiable and non-quantifiable costs, the incremental costs and benefits for the uranium options, the effects of the contaminant on the general population and on sensitive groups within the population (*e.g.,* children), and other relevant factors. In addition to the HRRCA, EPA is supporting today's final actions with a Economic Analysis (USEPA 2000g) that builds on the HRRCA, including some changes made in response to comments received.

c. Cumulative Affordability: Several commenters suggested that EPA consider the cumulative impact of its regulations on the affordability of water service, as opposed to looking at affordability one regulation at a time. EPA agrees that it would be best to look at ''cumulative affordability,'' since this is the only realistic indicator of affordability. For this reason, EPA includes a ''water bill baseline'' in its affordability assessments, which includes cumulative impacts from existing regulations. When a rule is promulgated, the water bill baseline increases and the estimate of affordability decreases, the details of which depend on the percentages of systems impacted and the estimates of the annual per household costs associated with the regulation. The affordability assessment supporting the uranium small systems compliance

[13] Table 2.4, Uncertainty Categories for Selected Risk Coefficients. Federal Guidance Report 13 (1999).

[14] It is difficult to estimate these costs due to recent efforts by many CWSs to comply with the current radium rule, however, we would expect approximately 200–400 systems would spend in the range of $18–36 million annually to comply with the current standard. (Low estimate in range is based on recent SDWIS data; high estimate is based on 1984 NIRS occurrence database.)

technology list is based on the current baseline, which is described in ''Variance Technology Findings for Contaminants Regulated Before 1996'', which can be downloaded at ''http://www.epa.gov/OGWDW/standard/varfd.pdf.'' As future rules are promulgated that impact small water systems (including this one), this baseline will be revised.

d. Disposal costs: One commenter suggested that EPA ''did not adequately address the disposal of waste stream residuals'' in the NODA and that waste disposal costs are a ''significant factor'' in estimating costs. EPA agrees that waste disposal considerations are very important when considering the implementation of this rule. Since the only MCL that EPA is finalizing today is the uranium MCL (the others are existing regulations), this is the only MCL that could be impacted by this consideration. In estimating the compliance costs for today's actions, EPA did include waste disposal costs in its estimate of treatment costs, including estimated waste-related capital costs, operations and maintenance costs, and residuals disposal. EPA believes that its estimate of residuals disposal are adequate and are based on the best available information.

e. Discounting of Costs and Benefits: One commenter stated that it is ''appropriate and standard practice to ensure that costs and benefits be evaluated on the same basis to avoid apples and oranges comparison,'' further stating that EPA should discount both or neither. EPA agrees that costs and benefits should be evaluated in such a way that they can be compared.

One approach to accomplish this is to annualize the costs and benefits of the regulation. In such instances, the capital costs, paid up front, need to be spread out across the life of the equipment. To do that, one needs to reflect the time value of resources. The analyst must ask the question: What is the annual payment that could finance the capital investment? Such a calculation would reflect the social discount rate. Annual operations and maintenance (O&M) costs would not have to be annualized, since these costs are assumed to be accrued on a continual basis each year.

Ideally, the analysis would also annualize the benefits using the same techniques. As noted previously, we have not made any such adjustments to the benefits associated with today's rule for uranium since the principal benefits are non-quantifiable (avoidance of kidney toxicity due to reductions in exposure to uranium). We do not believe that adjustments to these benefits estimates for either timing or income growth would materially affect our benefits assessment or decisions resulting from overall consideration of the benefits and costs of the regulatory standard.

f. Use of MCLs for Ground Water Protection Needs to be Evaluated as Part of this Rulemaking: One commenter stated that, since linkages are made between drinking water standards and ''clean-up standards'' for radioactively contaminated sites, the costs and benefits of applying drinking water standards to clean-up efforts should be evaluated as part of this rulemaking. EPA disagrees that clean-up costs and benefits should be used to influence the setting of drinking water MCLs. EPA does, however, agree that cross-program costs and benefits should be considered when appropriate. In this case, it is inappropriate to consider clean-up and ground water protection costs since MCLs are set specifically and solely with drinking water exposures in mind. If another program or Agency applies these MCLs for other purposes (*e.g.,* clean-up standards), then the costs and benefits of that application should be considered when evaluating that application.

V. Other Required Analyses and Consultations

A. Regulatory Flexibility Act (RFA)

The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. sec. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be CWSs serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of ''small'' for small businesses, governments, and non-profit organizations, EPA requested comment on an alternative definition of ''small entity'' in the preamble to the proposed Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the Small Business Administration's Office of Advocacy on the definition as it relates to small business analysis. In the preamble to the final CCR regulation (63 FR 4511, August 19, 1998), EPA expressed its intention to use this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it in this final rulemaking.

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the 1991 proposed rule (see 56 FR 33050). Since the proposed rule (July 18, 1991) pre-dated the 1996 Amendments to the RFA, EPA did not convene a Small Business Advocacy Review Panel for this rule.

We also prepared a final regulatory flexibility analysis (FRFA) for today's final rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in the docket and is summarized below.

The RFA requires EPA to include the following when completing an FRFA:

(1) A succinct statement of the need for, and objectives of the rule;

(2) A summary of the significant issues raised by the public comments on the IRFA, and a summary of the assessment of those issues, and a statement of any changes made to the proposed rule as a result of those comments;

(3) A description of the types and number of small entities to which the rule will apply and the impact they will experience, or an explanation why no estimate is available;

(4) A description of reporting, record keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the rule and the type of professional skills necessary for preparation of reports or records; and

(5) A description of the steps the Agency has taken to minimize the significant impact on small entities consistent with the stated objectives of

the applicable statutes, including a statement of the factual, policy, and legal reasons why we selected the chosen alternative in the final rule and why the other significant alternatives to the rule were rejected.

EPA has considered and addressed all of the requirements. The following is a summary of the FRFA. The need for and objectives for the rule are discussed in sections I.A, I.B, I.C and II.A of this preamble. Requirements ''2'' through ''4'' are addressed in the subsections that follow. The fifth requirement is discussed in sections I.D and I.J., which provide information about steps EPA has taken that will lessen impacts on small systems, including: (1) The selection of the less stringent uranium MCL, (2) overall reduced monitoring frequencies for systems with radionuclides levels less than the MCL, (3) allowance of grandfathering of data and State monitoring discretion for determining initial monitoring baseline, and (4) exclusion of NTNCWS from the regulation. Sections I.C. and I.B provide the rationale for the retention of the MCLs for radium-226 and -228, gross alpha, and photon/beta emitters.

The significant issues raised in public comments were the high cost of compliance for small systems and high cumulative costs for water contaminant testing. EPA understands these concerns and has made several changes to the proposed rule that will reduce cost impacts to small systems. In addition, commenters disagreed with the proposal to include NTNC water systems in the rule. Based on several factors, including these comments and the analyses of risks faced by NTNC customers, risk reductions, benefits, and costs, EPA has decided that additional future analyses and reevaluation, together with any new data that can be obtained is needed before regulating radionuclides at NTNC drinking water systems (see section I.D.8. for further discussion). This information will be collected and future regulatory action will be assessed under the regulatory review process. A complete summary of comments received and EPA's responses can be obtained from the docket (USEPA 2000a).

For many small entities, today's final rule will reduce long-term monitoring costs because the rule provides for less frequent follow-up monitoring (relative to the 1976 rule) for systems if they have radionuclides levels (e.g., gross alpha and radium-226 and -228) below the MCLs (most small systems). For example, under the 1976 rule, a system with a gross alpha level less than the MCL but greater than ½ MCL is required to monitor four times in a four year period. The revised monitoring scheme will allow this system to reduce the monitoring frequency to one sample every three years or less. In addition, EPA is giving States discretion in using historical monitoring data (grandfathering) to determine the initial monitoring baseline for systems. Therefore, systems with sufficient data may not be required to take four quarterly samples for the initial monitoring period and may immediately begin reduced monitoring (*e.g.,* one sample per three years, six years, or nine years) after the rule is effective (*e.g.,* three years after the rule is promulgated). See sections I.D ''How has this new information impacted the regulatory decisions being promulgated today?'' and I.J ''Where and how often must a water system test for radionuclides?'' for additional information about monitoring. A small percentage (<1.5%) of systems are expected to exceed the radium-226 and-228 and uranium MCLs and will be required to take action to come into compliance.

The number of small entities subject to today's rule is shown in Table V–1.

TABLE V–1.—SUMMARY OF ANALYSIS RESULTS

From the ''Economic Analysis of the Radionuclides NPDWR'' (USEPA 2000g)

Community water system size class (25 to 10,00)	Ground water systems						Surface water systems			
	Combined radium loophole		Uranium (20μg/L)		Uranium (40 μg/L)		Uranium (20 μg/L)		Uranium (40 μg/L)	
	Number of systems	Cost/ Revenue [1]	Number of systems	Cost/ Revenue [1]	Number of systems	Cost/ Revenue [1]	Number of systems	Cost/ Revenue [1]	Number of systems	Cost/ Revenue [1]
Total	270–310	[2] 1–2	820–900	[2] 1–3	300–400	[2] 1–3	< 10–40	[2] 1–3	0–20	[2] 0–3

Notes:

[1] As reported in the economic analysis support document (USEPA 2000g), the revenue portion of the cost per revenue estimates are based on data collected the 1992 Census of Governments. The Agency then estimated average revenues for small governments.

The reported ranges represent results using the directly proportional approach followed by results using the lognormal distribution approach.

''0'' indicates that no systems in this category are expected to be out of compliance with the MCL.

Revenue estimates are taken from Exhibit 6–3 of the economic analysis support document (USEPA 2000g).

See Appendix G of the economic analysis support document (USEPA 2000g) for information regarding the number of affected for the 25 to 10,000 size class and the associated costs. Detail does not add to totals due to rounding.

[2] Percent.

Small systems are also required to provide information in the Consumer Confidence Report or other public notification if the system exceeds one of the MCLs. As is the case for other contaminants, required information on radionuclides levels must be provided by affected systems and is not considered to be confidential. The professional skills necessary for preparing reports are the same skill level required by small systems for current reporting and monitoring requirements for other drinking water standards.

In addition to the public comments on the proposal, the Agency considered comments received through an outreach process that obtained input from small entities, including a Stakeholders meeting, Tribal consultations, and other consultations. After considering all the input from stakeholders as well as its own analyses, the Agency has included several measures in today's rule that should reduce the burden on small drinking water systems: (1) A revised monitoring scheme with long-term monitoring reduction for most small systems; (2) State discretion for grandfathering existing monitoring data; (3) the decision not to regulate non-transient, non-community water systems, which are generally very small water systems; and (4) the selection of a uranium MCL that is less stringent than the 1991 proposed feasible level. The uranium MCL is still protective of public health with an adequate margin

of safety, but will impact fewer small systems, reducing the number of systems that may face waste disposal issues, and increasing the likelihood that non-treatment options for achieving compliance may be used. These items are discussed in more detail in sections I.D and I.J.

EPA also is preparing a small entity compliance guide to help small entities comply with this rule. Small entities will be able to access a copy of this guide at: *http://www.epa.gov/sbrefa/* (to be available within 60 days of the publication of the rule in the **Federal Register**).

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number—2040–0228

Under this rule, respondents to the monitoring, reporting, and recordkeeping requirements include the owners and operators of community water systems and State officials that must report data to the Agency. Monitoring for radium-228, uranium, and beta and photon emitters will be required at each entry point to the distribution system under the final radionuclides rule. States will have discretion in grandfathering existing data for determining initial monitoring baselines for the currently regulated contaminants, combined radium-226/-228, gross alpha particle activity, and beta particle and photon radioactivity.

EPA has estimated the burden associated with the specific information collection, record keeping and reporting requirements of the proposed rule in the accompanying Information Collection Request (ICR). The ICR for today's final rule compares the current requirements to the revised requirements for information collection, reporting and record-keeping. There are several activities that the State and the CWSs must perform in preparing to comply with the revised Radionuclides Rule. Start-up activities include reading the final rule to become familiar with the requirements and training staff to perform the required activities.

For PWSs, the number of hours required to perform each activity may vary by system size. This rule only applies to community water systems. As shown in Table V–2, there are approximately 53,121 CWSs and 56 States and territories considered in this ICR (a total of 53,177 respondents). During the first three years after promulgation of this rule, the average burden hours per respondent per year is estimated to be 6 hours for PWSs and 115 hours for States. During this period, the total burden hour per year for the approximately 53,177 respondents covered by this rule is estimated to be 342,873 hours to prepare to comply with this revised Radionuclide Rule. There are no new monitoring, record-keeping, reporting or equipment costs for CWSs during the first three-year period, hence no responses are expected from the CWSs. The average number of responses for the States is expected to be 37 per year during the first three year period. Total annual labor costs during this first 3 year period are expected to be about $10 million per year for CWS.

TABLE V–2.—AVERAGE BURDEN, RESPONDENTS, AND RESPONSES DURING THE THREE-YEAR ICR APPROVAL PERIOD

	CWSs	States	Total (each year)
Average Burden Hours per Year	336,433	6,440	342,873
Average Respondents per Year	53,121	56	53,177
Average Burden Hours per Respondent per Year	6	115	121
Average Responses per Year	[1] 0	33	33
Average Burden Hours per Response per Year	[1] 0	17	17
Average Responses per Respondent per Year	[1] 0	[2] .66	.66

[1] Preparation only.
[2] Two over 3-year period.

TABLE V–3.—SUMMARY OF BURDEN AND COSTS FOR THE RADIONUCLIDES RULE FOR THE ICR APPROVAL PERIOD

Respondent Category	Number of respondents annually	Number of responses annually	Total annual burden (hours)	Total annual labor costs ($ dollars)	Total annual capital cost	Total annual O&M cost
CWSs	53,121	([1])	336,433	$9,925,042	0	0
States	56	[2] 37 (2 per respondent over 3 year period)	6,440	247,905	0	0
Total	53,177	33	342,873	10,172,947	0	0

[1] Preparation only.
[2] Two per respondent over 3-year period.

Three years after the promulgation date, community water systems will begin collecting mandatory monitoring data as described earlier in this section. As reported in the ICR (using a 7% discount rate over a 23 year period), EPA estimates that today's revisions to monitoring will result in a national annual monitoring, reporting and record keeping burden of $ 4.85 million (25,197 hours) for all CWSs and an average annual programmatic burden of $63,723 (4,170 hours) for States (total for all 56 jurisdictions) over the first 23 years after promulgation of this rule (see Table V–4).

TABLE V–4.—SUMMARY OF BURDEN AND COSTS FOR THE RADIONUCLIDES RULE FOR THE POST-ICR APPROVAL PERIOD

Respondent category	Number of respondents annually	Number of responses annually	Total annual burden (hours)	Total annual labor costs	Total annual capital cost	Total annual O&M cost (monitoring)
CWSs	53,121	50,394	25,197	$537,574	0	$4,855,439
States	56	224	4,170	63,723	0	63,723
Total	53,177	50,618	29,367	601,297	0	4,919,162

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing procedures to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 of the currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

C. Unfunded Mandates Reform Act

1. Summary of UMRA Requirements

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The estimated total annual compliance costs of the final rule is 83 million (See section IV. Economic Analyses for additional information). Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. This rule will establish requirements that affect small community water systems. EPA has determined that this rule may contain regulatory requirements that significantly or uniquely affect small governments. As described in part A of this section, EPA has provided all public water systems (including small systems) with opportunities to provide input into the development of this rule and to be informed about the requirements for compliance.

D. National Technology Transfer and Advancement Act

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.*, material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide to Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not establish any technical standards, thus, NTTAA does not apply to this rule. It should be noted, however, that systems complying with this rule need to use previously approved technical standards already included in § 141.25. Currently, a total of 89 radiochemical methods are approved for compliance monitoring of radionuclides in drinking water. Of these methods, twenty-four (24) are approved by the Standard Methods Committee and are described in the ''Standard Methods for the Examination of Waste and Wastewater (13th, 17th, 18th, and 19th editions),'' which was prepared and published by the American Public Health Association. In addition, twelve of the approved radiochemistry methods are from the American Society for Testing and Materials (ASTM) and are described in the Annual Book of ASTM Standards. These methods and their references are provided in Table I–8 (shown in section I of this preamble).

E. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant

regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' (59 FR 7629, February 16, 1994) establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice-related issues concerning the potential impacts of this action and has consulted with minority and low-income stakeholders by convening a stakeholder meeting via video conference specifically to address environmental justice issues.

As part of EPA's responsibilities to comply with E.O. 12898, the Agency held a stakeholder meeting via video conference on March 12, 1998, to highlight components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, tribal, municipal, and individual stakeholders. EPA conducted the meeting by video conference call between eleven cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water programs. The major objectives for the 1998 meeting were:

(1) Solicit ideas from Environmental Justice (EJ) stakeholders on known issues concerning current drinking water regulatory efforts;

(2) Identify key issues of concern to EJ stakeholders; and

(3) Receive suggestions from EJ stakeholders concerning ways to increase representation of EJ communities in OGWDW regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulations. A meeting summary for the March 12, 1998 Environmental Justice stakeholders meeting (USEPA 1998J) is available in the public docket for this final rulemaking.

The radionuclides rule applies to all community water systems, which will provide equal health protection for all minority and low-income populations served by systems regulated under this rule from exposure to radionuclides.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Was initiated after April 21, 1997, or for which a Notice of Proposed Rulemaking was published after April 21, 1998; (2) is determined to be ''economically significant'' as defined under E.O. 12866, and (3) 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 all three criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because EPA published a notice of proposed rulemaking before April 21, 1998. However, EPA's policy since November 1, 1995 is to consistently and explicitly consider risks to infants and children in all risk assessments generated during its decision making process including the setting of standards to protect public health and the environment.

Today's action primarily involves retaining the current MCLs for the regulated radionuclides, rather than adopting the less stringent 1991 proposed MCLs for the regulated radionuclides. In addition, an MCL for uranium, currently unregulated, is promulgated in today's rule. Since today's rule involves the decision to retain the more stringent current MCLs and to adopt a uranium MCL that is protective of both kidney toxicity and radiological carcinogenicity, today's action is consistent with greater protection of children's health.

The cancer risks estimated and presented in today's final rule explicitly account for differential cancer risks to children. In the case of uranium kidney toxicity, there is no information that suggests that children are a sensitive subpopulation. However, as discussed in the Notice of Data Availability (USEPA 2000e), the Agency does have reason to believe that radionuclides in drinking water present higher unit risks to children than to adults, since there is evidence that children are more sensitive to radiation than adults. Because of this, we have explicitly considered the risks to children in evaluating the lifetime risks associated with the current MCLs and 1991 proposed MCLs. In other words, the lifetime risks that are reported for each MCL are integrated over the entire lifetime of the individual and include the risks incurred during childhood.

In more detail, the per unit dose risk coefficients used to estimate lifetime risks are age-specific and organ-specific and are used in a lifetime risk model that applies the appropriate age-specific sensitivities throughout the calculation. The model also includes age-specific changes in organ mass and metabolism, which further incorporates age-specific effects pertinent to age sensitivity. The risk estimate at any age is the best estimate of risk for an individual of that age, so the summation of these age-specific risk estimates over all ages is best estimate of the lifetime risk for an individual. In developing the lifetime risks, the model calculates the risks over an age distribution for a stationary population to simulate the lifetime risk of an individual. The model also accounts for competing causes of death and age-specific survival rates. These adjustments make the lifetime risk estimate more realistic. At the same time, consumption rates of food, water and air are different between adults and children. The lifetime risk estimates for radionuclides in water use age-specific water intake rates derived from average

national consumption rates when calculating the risk per unit intake.

While radiation protection organizations have developed the concept of committed dose, the dose to an organ or tissue from time of intake to end of life, there is no equivalent for risk. If we define ''committed risk'' as the lifetime risk from a given intake, then it will be easier to compare the risks of intakes at different times of life. In Table V–5, the ''committed risk'' is given for 5 isotopes and 5 periods of life and continuous lifetime exposure. If the radionuclide concentration in the water is kept constant, the fraction of the lifetime risk committed during any age interval will also remain constant. Unless the intake is restricted in an age-specific manner, the fraction of the lifetime risk contributed by any age interval is a constant.

TABLE V–5.—LIFETIME RISKS AND FRACTIONS OF LIFETIME RISK PER AGE GROUP

Age (yrs)	0–6	6–18	18–30	30–70	70–110	0–110
Lifetime risk for intake of water containing 1 Bq/L during several different age intervals						
Ra-224	2.3e–05	3.3e–05	1.1e–05	1.5e–05	9.8e–07	8.4e–05
Ra-226	2.9e–05	8.6e–05	5.0e–05	5.1e–05	2.9e–06	2.2e–04
Ra-228	1.1e–04	2.6e–04	1.2e–04	1.1e–04	5.1e–06	6.1e–04
U-238	6.7e–06	1.2e–05	6.1e–06	9.8e–06	3.7e–07	3.4e–05
H-3	3.9e–09	8.5e–09	6.2e–09	9.6e–09	6.7e–10	2.9e–08
Percentage of lifetime risk committed for water intake during the age interval						
Ra-224	28	40	13	18	1	100
Ra-226	13	39	23	23	1	100
Ra-228	17	43	20	19	1	100
U-238	19	33	18	28	1	100
H-3	13	29	21	33	2	100

In summary, today's decision to retain the current more stringent MCLs for radionuclides and to establish an MCL for uranium in drinking water is consistent with the protection of children's health. In making this decision, EPA evaluated the lifetime radiogenic cancer risks associated with the current and final MCLs, which are based on age-specific cancer risk models that explicitly consider children's higher per unit dose risks.

H. 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 if it significantly or uniquely affects the communities of Indian tribal governments and 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 if 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.''

EPA does not believe that today's rule significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on these communities. The provisions of today's rules apply to all community water systems. Tribal governments may be owners or operators of such systems, however, nothing in today's provisions uniquely affects them. EPA believes that the final rule will not significantly burdens most Tribal systems, and in some cases, will be less burdensome than the current radionuclides rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Nonetheless, EPA did inform and involve Tribal governments in the rulemaking process. EPA staff attended the 16th Annual Consumer Conference of the National Indian Health Board on October 6–8, 1998 in Anchorage, Alaska. Over nine hundred attendees representing Tribes from across the country were in attendance. During the conference, EPA conducted two workshops for meeting participants. The objectives of the workshops were to present an overview of EPA's drinking water program, solicit comments on key issues of potential interest in upcoming drinking water regulations, and to solicit advice in identifying an effective consultative process with Tribes for the future.

EPA, in conjunction with the Inter Tribal Council of Arizona (ITCA), also convened a Tribal consultation meeting on February 24–25, 1999, in Las Vegas, Nevada to discuss ways to involve Tribal representatives, both Tribal council members and tribal water utility operators, in the stakeholder process. Approximately twenty-five representatives from a diverse group of Tribes attended the two-day meeting. Meeting participants included representatives from the following Tribes: Cherokee Nation, Nezperce Tribe, Jicarilla Apache Tribe, Blackfeet Tribe, Seminole Tribe of Florida, Hopi Tribe, Cheyenne River Sioux Tribe, Menominee Indian Tribe, Tulalip Tribes, Mississippi Band of Choctaw Indians, Narragansett Indian Tribe, and Yakama Nation.

The major meeting objectives were to:

(1) Identify key issues of concern to Tribal representatives;

(2) Solicit input on issues concerning current OGWDW regulatory efforts;

(3) Solicit input and information that should be included in support of future drinking water regulations; and

(4) Provide an effective format for Tribal involvement in EPA's regulatory development process.

EPA staff also provided an overview on the forthcoming radionuclides rule at the meeting. The presentation included the health concerns associated with radionuclides, EPA's current position

on radionuclides in drinking water, and specific issues for Tribes. The following questions were posed to the Tribal representatives to begin discussion on radionuclides in drinking water:

(1) What are the current radionuclides levels in your water systems?

(2) Are you treating for radionuclides if they exceed the MCL? Is it effective and affordable?

(3) What are Tribal water systems affordability issues in regard to radionuclides?

(4) Would in home treatment units be an acceptable alternative to central treatment?

(5) What level of monitoring is reasonable?

The summary for the February 24–25, 1999 meeting was sent to all 565 Federally recognized Tribes in the United States.

EPA also conducted a series of workshops at the Annual Conference of the National Tribal Environmental Council which was held on May 18–20, 1999 in Eureka, California. Representatives from over 50 Tribes attended all, or part, of these sessions. The objectives of the workshops were to provide an overview of forthcoming EPA regulations affecting water systems; discuss changes to operator certification requirements; discuss funding for Tribal water systems; and to discuss innovative approaches to regulatory cost reduction. Meeting summaries for EPA's Tribal consultations are available in the public docket for this rulemaking (USEPA 1999c, USEPA 1999d).

I. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State and local elected officials in the process of developing this final regulation. On May 30, 2000, EPA held a one-day meeting in Washington, DC with representatives of elected State and local officials to discuss how upcoming drinking water regulations may affect State, county, and local governments. The rules discussed were: Arsenic, Radon, Radionuclides, Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule, and the Ground Water Rule. EPA invited associations which represent elected officials, including National Governors' Association (NGA), National League of Cities (NLC), Council of State Governments (CSG), U.S. Conference of Mayors, International City/County Management Association (ICMA), National Association of Counties (NACO), National Association of Towns and Townships, and National Conference of State Legislators (NCSL). EPA also invited the National Association of Attorneys General (NAAG), the Association of State and Territorial Health Officials (ASTHO), the Environmental Council of States (ECOS), and the Southern Govenors' Association (SGO). With the invitation letter, EPA provided an agenda and background information about the five upcoming drinking water rules, including today's rule.

Ten representatives of elected officials participated in the one-day meeting, which included State of Florida—Governor Bush's Office, State of Ohio-Governor Taft's Office, NGA, NACO, NAAG, NLC, ECOS, ICMA, SGO, and ASTHO. The meeting encompassed presentation and discussion about each of the five rules. The purpose of the meeting was to:

- Provide information about the five upcoming drinking water regulations;
- Consult on the expected compliance and implementation costs of these rules for State, county, and local governments; and
- Gain a better understanding of State, county, and local governments' and their elected officials' views.

Following the meeting, EPA sent the materials presented and distributed at the meeting to the organizations that were not able to attend, in order to provide them additional information about the upcoming regulations. EPA has prepared a meeting summary which provides in more detail the participants' concerns and questions regarding each rule. This summary is available in the public docket supporting this rulemaking (USEPA 2000c).

This meeting was not held sooner due to the relatively recently signed Executive Order and the need to consider how to best comply with its terms and conditions. Thus, many of the issues associated with today's rulemaking were in relatively advanced stages of development by the time of the May 30, 2000 meeting. Nevertheless, we endeavored to accommodate each of the comments received from elected officials or their representatives to the maximum extent possible, within the constraints imposed by our statutory mandate to protect public health through the promulgation of drinking water standards.

The principal concerns of these officials were the overall burden of the rule and the potentially high costs of compliance with its provisions. In particular, they expressed concerns about the affordability for the rule for small systems and costs for disposal of treatment residues that may be considered hazardous due to radioactivity. In response, we took several steps to address these particular concerns as well as actions in response to the generalized concern about the overall burden of the rule.

EPA believes that today's regulatory action is necessary to reduce kidney toxicity and cancer health risks from uranium, as well as to maintain public health protection resulting from the current radionuclide National Primary Drinking Water Regulations. The Agency understands the officials' concerns about regulatory burden and have addressed them in several ways. First, EPA selected a less stringent MCL for uranium of 30 μg/L by invoking the discretionary authority for the Administrator to set an MCL less stringent than the feasible level if the benefits of an MCL set at the feasible level would not justify the costs (section 1412(b)(6)). As a result, fewer water systems will be in violation of the uranium MCL, reducing the number of systems that may face radioactive waste disposal issues, and resulting in the ability of a higher percentage of water systems to use non-treatment options for achieving compliance (*e.g.,* new wells, blending of water sources, modifying existing operations, etc.).

To further mitigate impacts on water systems and State drinking water programs, EPA is allowing State discretion in grandfathering data for determining initial monitoring frequency. Since the data grandfathering plan will be a part of a State's primacy package, EPA will have oversight over the data grandfathering process. EPA believes that this approach provides flexibility for States to consider their

particular circumstances, while allowing EPA to ensure that goals are met. Under this approach, many systems will be able to use existing monitoring data to establish initial monitoring baselines, which will be used to determine future monitoring frequency under the Standardized Monitoring Framework. Water systems that do not have adequate data to grandfather will be required to follow the requirements for new monitoring. The details of these requirements can be found in part J of section I, ''Where and how often must a water system test for radionuclides?'' EPA expects that there will be overall reduced monitoring burden in the long-term, with monitoring relief being targeted towards those water systems that have low radionuclide levels. Today's final rule will not apply to non-transient, non-community water systems (*e.g.,* schools, state parks, nursing homes), which are primarily small ground water systems.

EPA will provide guidance to small water systems on complying with today's rule. This will include information on monitoring, treatment technology and other compliance options, including information on the disposal of water treatment residuals. Regarding the cost of treatment, EPA agrees that treatment technologies can be expensive for small water systems. However, EPA expects that many small water systems will rely on other compliance options, *e.g.,* alternate source, purchasing water, and point-of-use devices. In cases in which small water systems have no other option and cannot afford to install treatment, they may apply to the State for exemptions (see part M of section I, ''Can my water system get a variance or an exemption?''), which gives them extra time. An exemption is limited to three years after the otherwise applicable compliance date, although extensions up to a total of six additional years may be available to small systems under certain conditions. If a water system has very high contaminant levels and no compliance options other than treatment, the water system can apply for a variance, under the requirements described in part M of section I. In addition, there are various sources of funding for State and local governments, including the Drinking Water State Revolving Fund, which is described in part M of section I, ''What financial assistance is available for complying with the rule?''

J. Consultation With the Science Advisory Board and the National Drinking Water Advisory Council

In accordance with section 1412(d) and (e) of SDWA, EPA consulted with the Science Advisory Board and National Drinking Water Advisory Council and considered their comments in developing this rule. See the OW Docket for additional information.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 8, 2003.

VI. References

NIH 2000a. ''Kidney Diseases: Publications On-Line.'' National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). June 2000. National Institutes of Health.

NIH 2000b. ''Proteinuria.'' National Kidney and Urologic Diseases Information Clearinghouse. June 2000. National Institutes of Health.

NIH 2000c. ''Your Kidneys and How They Work.'' National Kidney and Urologic Diseases Information Clearinghouse. June 2000. National Institutes of Health.

USEPA 1991. ''Regulatory Impact Analysis of Proposed National Primary Drinking Water Regulations for Radionuclides (Draft dated June 14, 1991). Prepared by Wade Miller Associates.

USEPA 1994. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994.

USEPA 1998a. ''A Fact Sheet on the Health Effects from Ionizing Radiation.'' Prepared by the Office of Radiation & Indoor Air, Radiation Protection Division. EPA 402–F–98–010. May 1998.

USEPA 1998b. Announcement of Small System Compliance Technology Lists for Existing National Primary Drinking Water Regulations and Findings Concerning Variance Technologies, 63 FR 42032, August 6, 1998.

USEPA 1998c. ''Ionizing Radiation Series No. 1.'' Prepared by the Office of Radiation & Indoor Air, Radiation Protection Division. EPA 402–F–98–009. May 1998.

USEPA 1998d. National Primary Drinking Water Regulations: Consumer Confidence; Proposed Rule 63 FR 7605, February 13, 1998.

USEPA 1998e. National Primary Drinking Water Regulation: Consumer Confidence Reports; Final Rule, 63 FR 44511, August 19, 1998.

USEPA 1998f. ''Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996.'' EPA–815–R–98–002. September 1998.

USEPA 1999a. ''Small Systems Compliance Technology List for the Radionuclides Rule.'' Prepared by International Consultants, Inc. Draft. April 1999.

USEPA 1999b. Cancer Risk Coefficients for Environmental Exposure to Radionuclides, Federal Guidance Report No. 13. US Environmental Protection Agency, Washington, DC, 1999.

USEPA 1999c. ''Inter Tribal Council of Arizona, Inc.: Ground Water and Drinking Water Tribal Consultation Meeting.'' Executive Summary. February 24–25, 1999.

USEPA 1999d. ''OGWDW Tribal Consultations: Workshops at the Annual Conference of the National Tribal Environmental Council.'' May 18–20, 1999.

USEPA 2000a. ''Comment/Response Document for the Radionuclides Notice of Data Availability and 1991 Proposed Rule.'' Prepared by Industrial Economics, Inc. for EPA. November 2000.

USEPA 2000b. ''Draft Toxicological Review of Uranium.'' Prepared by the Office of Science and Technology. Draft. June 6, 2000.

USEPA 2000c. Government Dialogue on U.S. EPA's Upcoming Drinking Water Regulations. Meeting Summary. May 30, 2000.

USEPA 2000d. ''Information Collection Request for National Primary Drinking Water Regulations: Radionuclides''. Prepared by ISSI Consulting Group, for EPA. September 22, 2000.

USEPA 2000e. National Primary Drinking Water Regulations; Radionuclides; Notice of Data Availability; Proposed Rule. 65 FR 21577. April 21, 2000.

USEPA 2000f. ''Preliminary Health Risk Reduction and Cost Analysis: Revised National Primary Drinking Water Standards for Radionuclides.'' Prepared by Industrial Economics, Inc. for EPA. Draft. January 2000.

USEPA 2000g. ''Economic Analysis of the Radionuclides National Primary Drinking Water Regulations.'' Prepared by Industrial Economics, Inc. for EPA. November 2000.

USEPA 2000h. ''Technical Support Document for the Radionuclides Notice of Data Availability.'' Draft. March, 2000.

USEPA 2000i. ''Technologies and Costs for the Removal of Radionuclides from Potable Water Supplies.'' Draft. Prepared by Malcolm Pirnie, Inc. June, 2000.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Incorporation by reference, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: November 21, 2000.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, 40 CFR parts 9, 141, and 142 are amended as follows:

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326–1330, 1324, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by:

(a) Removing the entry for 141.25–141.30 and adding new entries for 141.25(a)–(e), 141.26 (a)–(b), and 141.27–141.30;

(b) Removing the entry for 142.14(a)–(d)(7) and adding new entries for 142.14(a)–(d)(3), 142.14(d)(4)–(5), and 142.14(d)(6)–(7); and

(c) Removing the entry for 142.15(c)(5)–(d) and adding new entries for 142.15(c)(5), 142.15(c)(6)–(7), and 142.15(d).

The additions read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Primary Drinking Water Regulations	
* * * * *	
141.25(a)–(e)	2040–0090
141.26(a)–(b)	2040–0228
141.27–141.30	2040–0090
142.14(a)–(d)(3)	2040–0090
142.14(d)(4)–(5)	2040–0228
142.14(d)(6)–(7)	2040–0090
* * * * *	
142.15(c)(5)	2040–0090
142.15(c)(6)–(7)	2040–0228
142.15(d)	2040–0090

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart B—[Amended]

§§ 141.15 and 141.16 [Removed]

2. Sections 141.15 and 141.16 are removed.

Subpart C—[Amended]

3. Section 141.25 is amended by:

a. Revising paragraph (a) introductory text (the table remains unchanged),

b. Revising paragraph (c)(1),

c. Revising paragraph (c)(2) and redisgnating Table B in paragraph (c)(2) as Table C and

d. Revising paragraph (d).

The revisions read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) Analysis for the following contaminants shall be conducted to determine compliance with § 141.66 (radioactivity) in accordance with the methods in the following table, or their equivalent determined by EPA in accordance with § 141.27.

* * * * *

(c) * * *

(1) To determine compliance with § 141.66(b), (c), and (e) the detection limit shall not exceed the concentrations in Table B to this paragraph.

TABLE B.—DETECTION LIMITS FOR GROSS ALPHA PARTICLE ACTIVITY, RADIUM 226, RADIUM 228, AND URANIUM

Contaminant	Detection limit
Gross alpha particle activity	3 pCi/L.
Radium 226	1 pCi/L.
Radium 228	1 pCi/L.
Uranium	Reserve

(2) To determine compliance with § 141.66(d) the detection limits shall not exceed the concentrations listed in Table C to this paragraph.

* * * * *

(d) To judge compliance with the maximum contaminant levels listed in § 141.66, averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

* * * * *

4. Section 141.26 is revised to read as follows:

§ 141.26 Monitoring frequency and compliance requirements for radionuclides in community water systems

(a) Monitoring and compliance requirements for gross alpha particle activity, radium-226, radium-228, and uranium.

(1) Community water systems (CWSs) must conduct initial monitoring to determine compliance with § 141.66(b), (c), and (e) by December 31, 2007. For the purposes of monitoring for gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity in drinking water, ''detection limit'' is defined as in § 141.25(c).

(i) Applicability and sampling location for existing community water systems or sources. All existing CWSs using ground water, surface water or systems using both ground and surface water (for the purpose of this section hereafter referred to as systems) must sample at every entry point to the distribution system that is representative of all sources being used (hereafter called a sampling point) under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source or the State has designated a distribution system location, in accordance with paragraph (a)(2)(ii)(C) of this section.

(ii) Applicability and sampling location for new community water systems or sources. All new CWSs or CWSs that use a new source of water

must begin to conduct initial monitoring for the new source within the first quarter after initiating use of the source. CWSs must conduct more frequent monitoring when ordered by the State in the event of possible contamination or when changes in the distribution system or treatment processes occur which may increase the concentration of radioactivity in finished water.

(2) Initial monitoring: Systems must conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows:

(i) Systems without acceptable historical data, as defined below, must collect four consecutive quarterly samples at all sampling points before December 31, 2007.

(ii) Grandfathering of data: States may allow historical monitoring data collected at a sampling point to satisfy the initial monitoring requirements for that sampling point, for the following situations.

(A) To satisfy initial monitoring requirements, a community water system having only one entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(B) To satisfy initial monitoring requirements, a community water system with multiple entry points and having appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(C) To satisfy initial monitoring requirements, a community water system with appropriate historical data for a representative point in the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003, provided that the State finds that the historical data satisfactorily demonstrate that each entry point to the distribution system is expected to be in compliance based upon the historical data and reasonable assumptions about the variability of contaminant levels between entry points. The State must make a written finding indicating how the data conforms to the these requirements.

(iii) For gross alpha particle activity, uranium, radium-226, and radium-228 monitoring, the State may waive the final two quarters of initial monitoring for a sampling point if the results of the samples from the previous two quarters are below the detection limit.

(iv) If the average of the initial monitoring results for a sampling point is above the MCL, the system must collect and analyze quarterly samples at that sampling point until the system has results from four consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the State.

(3) Reduced monitoring: States may allow community water systems to reduce the future frequency of monitoring from once every three years to once every six or nine years at each sampling point, based on the following criteria.

(i) If the average of the initial monitoring results for each contaminant (*i.e.,* gross alpha particle activity, uranium, radium-226, or radium-228) is below the detection limit specified in Table B, in § 141.25(c)(1), the system must collect and analyze for that contaminant using at least one sample at that sampling point every nine years.

(ii) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below ½ the MCL, the system must collect and analyze for that contaminant using at least one sample at that sampling point every six years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is at or above the detection limit but at or below ½ the MCL, the system must collect and analyze for that contaminant using at least one sample at that sampling point every six years.

(iii) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is above ½ the MCL but at or below the MCL, the system must collect and analyze at least one sample at that sampling point every three years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is above ½ the MCL but at or below the MCL, the system must collect and analyze at least one sample at that sampling point every three years.

(iv) Systems must use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods (*e.g.,* if a system's sampling point is on a nine year monitoring period, and the sample result is above ½ MCL, then the next monitoring period for that sampling point is three years).

(v) If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system must collect and analyze quarterly samples at that sampling point until the system has results from four consecutive quarters that are below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the State.

(4) Compositing: To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample. States will treat analytical results from the composited as the average analytical result to determine compliance with the MCLs and the future monitoring frequency. If the analytical result from the composited sample is greater than ½ MCL, the State may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(5) A gross alpha particle activity measurement may be substituted for the required radium-226 measurement provided that the measured gross alpha particle activity does not exceed 5 pCi/l. A gross alpha particle activity measurement may be substituted for the required uranium measurement provided that the measured gross alpha particle activity does not exceed 15 pCi/l.

The gross alpha measurement shall have a confidence interval of 95% (1.65σ, where σ is the standard deviation of the net counting rate of the sample) for radium-226 and uranium. When a system uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, ½ the detection limit will be used to determine compliance and the future monitoring frequency.

(b) *Monitoring and compliance requirements for beta particle and photon radioactivity.*

To determine compliance with the maximum contaminant levels in § 141.66(d) for beta particle and photon radioactivity, a system must monitor at a frequency as follows:

(1) Community water systems (both surface and ground water) designated by the State as vulnerable must sample for beta particle and photon radioactivity. Systems must collect quarterly samples

for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one quarter after being notified by the State. Systems already designated by the State must continue to sample until the State reviews and either reaffirms or removes the designation.

(i) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 50 pCi/L (screening level), the State may reduce the frequency of monitoring at that sampling point to once every 3 years. Systems must collect all samples required in paragraph (b)(1) of this section during the reduced monitoring period.

(ii) For systems in the vicinity of a nuclear facility, the State may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the State determines if such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data must begin monitoring at the community water system's entry point(s) in accordance with paragraph (b)(1) of this section.

(2) Community water systems (both surface and ground water) designated by the State as utilizing waters contaminated by effluents from nuclear facilities must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one quarter after being notified by the State. Systems already designated by the State as systems using waters contaminated by effluents from nuclear facilities must continue to sample until the State reviews and either reaffirms or removes the designation.

(i) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended.

(ii) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. As ordered by the State, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(iii) Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended.

(iv) If the gross beta particle activity beta minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L, the State may reduce the frequency of monitoring at that sampling point to every 3 years. Systems must collect all samples required in paragraph (b)(2) of this section during the reduced monitoring period.

(v) For systems in the vicinity of a nuclear facility, the State may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the State determines if such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data must begin monitoring at the community water system's entry point(s) in accordance with paragraph (b)(2) of this section.

(3) Community water systems designated by the State to monitor for beta particle and photon radioactivity can not apply to the State for a waiver from the monitoring frequencies specified in paragraph (b)(1) or (b)(2) of this section.

(4) Community water systems may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82.

(5) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with § 141.66(d)(1), using the formula in § 141.66(d)(2). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

(6) Systems must monitor monthly at the sampling point(s) which exceed the maximum contaminant level in § 141.66(d) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until the system has established, by a rolling average of 3 monthly samples, that the MCL is being met. Systems who establish that the MCL is being met must return to quarterly monitoring until they meet the requirements set forth in paragraph (b)(1)(ii) or (b)(2)(i) of this section.

(c) General monitoring and compliance requirements for radionuclides.

(1) The State may require more frequent monitoring than specified in paragraphs (a) and (b) of this section, or may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

(2) Each public water systems shall monitor at the time designated by the State during each compliance period.

(3) Compliance: Compliance with § 141.66 (b) through (e) will be determined based on the analytical result(s) obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

(ii) For systems monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any sample point, the system is out of compliance with the MCL immediately.

(iii) Systems must include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

(iv) If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(v) If a sample result is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, ½ the detection limit will be used to calculate the annual average.

(4) States have the discretion to delete results of obvious sampling or analytic errors.

(5) If the MCL for radioactivity set forth in § 141.66 (b) through (e) is exceeded, the operator of a community water system must give notice to the

State pursuant to § 141.31 and to the public as required by subpart Q of this part.

Subpart F—[Amended]

5. A new § 141.55 is added to subpart F to read as follows:

§ 141.55 Maximum contaminant level goals for radionuclides.

MCLGs for radionuclides are as indicated in the following table:

Contaminant	MCLG
1. Combined radium-226 and radium-228.	Zero.
2. Gross alpha particle activity (excluding radon and uranium).	Zero.
3. Beta particle and photon radioactivity.	Zero.
4. Uranium	Zero.

Subpart G—National Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels

6. The heading of subpart G is revised as set out above.

7. A new § 141.66 is added to subpart G to read as follows:

§ 141.66 Maximum contaminant levels for radionuclides.

(a) [Reserved]

(b) *MCL for combined radium-226 and -228.* The maximum contaminant level for combined radium-226 and radium-228 is 5 pCi/L. The combined radium-226 and radium-228 value is determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.

(c) *MCL for gross alpha particle activity (excluding radon and uranium).* The maximum contaminant level for gross alpha particle activity (including radium-226 but excluding radon and uranium) is 15 pCi/L.

(d) *MCL for beta particle and photon radioactivity.* (1) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water must not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year (mrem/year).

(2) Except for the radionuclides listed in table A, the concentration of man-made radionuclides causing 4 mrem total body or organ dose equivalents must be calculated on the basis of 2 liter per day drinking water intake using the 168 hour data list in ''Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure,'' NBS (National Bureau of Standards) Handbook 69 as amended August 1963, U.S. Department of Commerce. 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 of this document are available from the National Technical Information Service, NTIS ADA 280 282, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–553–6847. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 mrem/year.

TABLE A.—AVERAGE ANNUAL CONCENTRATIONS ASSUMED TO PRODUCE: A TOTAL BODY OR ORGAN DOSE OF 4 MREM/YR

1. Radionuclide	Critical organ	pCi per liter
2. Tritium	Total body	20,000
3. Strontium-90	Bone Marrow	8

(e) *MCL for uranium.* The maximum contaminant level for uranium is 30 μg/L.

(f) *Compliance dates.* (1) Compliance dates for combined radium-226 and -228, gross alpha particle activity, gross beta particle and photon radioactivity, and uranium: Community water systems must comply with the MCLs listed in paragraphs (b), (c), (d), and (e) of this section beginning December 8, 2003 and compliance shall be determined in accordance with the requirements of §§ 141.25 and 141.26. Compliance with reporting requirements for the radionuclides under appendix A to subpart O and appendices A and B to subpart Q is required on December 8, 2003.

(g) *Best available technologies (BATs) for radionuclides.* The Administrator, pursuant to section 1412 of the Act, hereby identifies as indicated in the following table the best technology available for achieving compliance with the maximum contaminant levels for combined radium-226 and -228, uranium, gross alpha particle activity, and beta particle and photon radioactivity.

TABLE B.—BAT FOR COMBINED RADIUM-226 AND RADIUM-228, URANIUM, GROSS ALPHA PARTICLE ACTIVITY, AND BETA PARTICLE AND PHOTON RADIOACTIVITY

Contaminant	BAT
1. Combined radium-226 and radium-228	Ion exchange, reverse osmosis, lime softening.
2. Uranium	Ion exchange, reverse osmosis, lime softening, coagulation/filtration.
3. Gross alpha particle activity (excluding Radon and Uranium)	Reverse osmosis.
4. Beta particle and photon radioactivity	Ion exchange, reverse osmosis.

(h) *Small systems compliance technologies list for radionuclides.*

TABLE C.—LIST OF SMALL SYSTEMS COMPLIANCE TECHNOLOGIES FOR RADIONUCLIDES AND LIMITATIONS TO USE

Unit technologies	Limitations (see footnotes)	Operator skill level required [1]	Raw water quality range and considerations.[1]
1. Ion exchange (IE)	([a])	Intermediate	All ground waters.
2. Point of use (POU [2]) IE	([b])	Basic	All ground waters.
3. Reverse osmosis (RO)	([c])	Advanced	Surface waters usually require pre-filtration.
4. POU[2] RO	([b])	Basic	Surface waters usually require pre-filtration.
5. Lime softening	([d])	Advanced	All waters.
6. Green sand filtration	([e])	Basic.	
7. Co-precipitation with Barium sulfate	([f])	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/electrodialysis reversal		Basic to Intermediate	All ground waters.
9. Pre-formed hydrous Manganese oxide filtration.	([g])	Intermediate	All ground waters.
10. Activated alumina	([a]), ([h])	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency.
11. Enhanced coagulation/filtration	([i])	Advanced	Can treat a wide range of water qualities.

[1] National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, D.C. 1997.

[2] A POU, or ''point-of-use'' technology is a treatment device installed at a single tap used for the purpose of reducing contaminants in drinking water at that one tap. POU devices are typically installed at the kitchen tap. See the April 21, 2000 NODA for more details.

Limitations Footnotes: Technologies for Radionuclides:

[a] The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

[b] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance.

[c] Reject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in the SWTR Compliance Technologies Table.

[d] The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

[e] Removal efficiencies can vary depending on water quality.

[f] This technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

[g] This technology is most applicable to small systems that already have filtration in place.

[h] Handling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.

[i] Assumes modification to a coagulation/filtration process already in place.

TABLE D.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR RADIONUCLIDE NPDWR'S

Contaminant	Compliance technologies [1] for system size categories (population served)		3,300–10,000
	25–500	501–3,300	
1. Combined radium-226 and radium-228	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7. 8, 9.
2. Gross alpha particle activity	3, 4	3, 4	3, 4.
3. Beta particle activity and photon activity	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4.
4. Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11.

Note: [1] Numbers correspond to those technologies found listed in the table C of 141.66(h).

Subpart O—[Amended]

8. The table in appendix A to subpart O is amended under the heading ''Radioactive contaminants'' by revising the entries for ''Beta/photon emitters (mrem/yr)'', ''Alpha emitters (pCi/l)'', and ''Combined radium (pCi/l)'' and adding a new entry for ''Uranium (pCi/L)'' to read as follows:

Appendix A to Subpart O—Regulated Contaminants

Contaminant units	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
*	*	*	*	*	*	*
Radioactive contaminants:						
Beta/photon emitters (mrem/yr).	4 mrem/yr	–	4	0	Decay of natural and man-made deposits.	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta particle and photon radioactivity in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha emitters (pCi/L).	15 pCi/L	–	15	0	Erosion of natural deposits.	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (pCi/L).	5 pCi/L	–	5	0	Erosion of natural deposits.	Some people who drink water containing radium-226 or -228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium (pCi/L)	30 µg/L	–	30	0	Erosion of natural deposits.	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
*	*	*	*	*	*	*

Subpart Q—[Amended]

9. Appendix A to subpart Q under I.F. ''Radioactive contaminants'' is amended by:

a. Revising entries 1, 2, and 3;

b. Adding entry 4;

c. Redesignating endnotes 9 through 17 as endnotes 11 through 19; and

d. Adding new endnotes 9 and 10.

Appendix A to Subpart Q—NPDWR Violations and Other Situations Requiring Public Notice [1]

Contaminant	MCL/MRDL/TT Violations [2]		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR) [3]				
*	*	*	*	*
F. Radioactive contaminants				
1. Beta/photon emitters	2	141.66(d)	3	141.25(a) 141.26(b)
2. Alpha emitters	2	141.66(c)	3	141.25(a) 141.26(a)
3. Combined radium (226 and 228)	2	141.66(b)	3	141.25(a) 141.26(a)
4. Uranium	[9] 2	141.66(e)	[10] 3	141.25(a) 141.26(a)
*	*	*	*	*

Appendix A—Endnotes

* * * * *

1. Violations and other situations not listed in this table (*e.g.*, reporting violations and failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primary agency. Primacy agencies may, at their option, also

require a more stringent public notice tier (*e.g.*, Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under Sec. 141.202(a) and Sec. 141.203(a).

2. MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique.

3. The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

* * * * *

9. The uranium MCL Tier 2 violation citations are effective December 8, 2003 for all community water systems.

10. The uranium Tier 3 violation citations are effective December 8, 2000 for all community water systems.

* * * * *

10. Appendix B to Subpart Q is amended by:

a. Redesignating entries 79 through 84 and 86 through 88 as 80 through 85 and 87 through 89, respectively, and entries 85a and 85b as 86a and 86b, respectively;

b. Adding a new entry 79 for uranium under ''G. Radioactive contaminants'';

c. Redesignating endnote entries 16 through 21 as 17 through 22; and

d. adding a new endnote 16.

Appendix B to Subpart Q—Standard Health Effects Language for Public Notification

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR)			
* *	*	*	* * * * *
G. Radioactive contaminants			
* *	*	*	* * * * *
79. Uranium[16]	Zero	30 µg/L	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
* *	*	*	* * * * *

Appendix B—Endnotes

1. MCLG—Maximum contaminant level goal

2. MCL—Maximum contaminant level

* * * * *

16. The uranium MCL is effective December 8, 2003 for all community water systems.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart B—Primary Enforcement Responsibility

2. Section 142.16 is amended by adding and reserving paragraphs (i), (j), and (k) and adding a new paragraph (l) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(i)–(k) [Reserved]

(l) An application for approval of a State program revision for radionuclides which adopts the requirements specified in § 141.26(a)(2)(ii)(C) of this chapter must contain the following (in addition to the general primacy requirements enumerated in this part, including that State regulations be at least as stringent as the Federal requirements):

(1) If a State chooses to use grandfathered data in the manner described in § 141.26(a)(2)(ii)(C) of this chapter, then the State must describe the procedures and criteria which it will use to make these determinations (whether distribution system or entry point sampling points are used).

(i) The decision criteria that the State will use to determine that data collected in the distribution system are representative of the drinking water supplied from each entry point to the distribution system. These determinations must consider:

(A) All previous monitoring data.

(B) The variation in reported activity levels.

(C) Other factors affecting the representativeness of the data (*e.g.* geology).

(ii) [Reserved]

(2) A monitoring plan by which the State will assure all systems complete the required monitoring within the regulatory deadlines. States may update their existing monitoring plan or use the same monitoring plan submitted for the requirements in § 142.16(e)(5) under the national primary drinking water regulations for the inorganic and organic contaminants (*i.e.* the phase II/V rules). States may note in their application any revision to an existing monitoring plan or note that the same monitoring plan will be used. The State must demonstrate that the monitoring plan is enforceable under State law.

Subpart G—[Amended]

3. Section 142.65 is added to read as follows.

§ 142.65 Variances and exemptions from the maximum contaminant levels for radionuclides.

(a)(1) Variances and exemptions from the maximum contaminant levels for combined radium-226 and radium-228, uranium, gross alpha particle activity (excluding Radon and Uranium), and beta particle and photon radioactivity.

(i) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the radionuclides listed in § 141.66(b), (c), (d), and (e) of this chapter, for the purposes of issuing variances and exemptions, as shown in Table A to this paragraph.

TABLE A.—BAT FOR RADIONUCLIDES LISTED IN § 141.66

Contaminant	BAT
Combined radium-226 and radium-228	Ion exchange, reverse osmosis, lime softening.
Uranium	Ion exchange, reverse osmosis, lime softening, coagulation/filtration.
Gross alpha particle activity (excluding radon and uranium)	Reverse osmosis.
Beta particle and photon radioactivity	Ion exchange, reverse osmosis.

(ii) In addition, the Administrator hereby identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the radionuclides listed in § 141.66(b), (c), (d), and (e) of this chapter, for the purposes of issuing variances and exemptions to small drinking water systems, defined here as those serving 10,000 persons or fewer, as shown in Table C to this paragraph.

TABLE B.—LIST OF SMALL SYSTEMS COMPLIANCE TECHNOLOGIES FOR RADIONUCLIDES AND LIMITATIONS TO USE

Unit technologies	Limitations (see footnotes)	Operator skill level required [1]	Raw water quality range & considerations [1]
1. Ion exchange (IE)	([a])	Intermediate	All ground waters.
2. Point of use (POU [2]) IE	([b])	Basic	All ground waters.
3. Reverse osmosis (RO)	([c])	Advanced	Surface waters usually require pre-filtration.
4. POU [2] RO	([b])	Basic	Surface waters usually require pre-filtration.
5. Lime softening	([d])	Advanced	All waters.
6. Green sand filtration	([e])	Basic.	
7. Co-precipitation with barium sulfate	([f])	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/electrodialysis reversal		Basic to Intermediate	All ground waters.
9. Pre-formed hydrous manganese oxide filtration.	([g])	Intermediate	All ground waters.
10. Activated alumina	([a]), ([h])	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency.
11. Enhanced coagulation/filtration	([i])	Advanced	Can treat a wide range of water qualities.

[1] National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, D.C. 1997.

[2] A POU, or ''point-of-use'' technology is a treatment device installed at a single tap used for the purpose of reducing contaminants in drinking water at that one tap. POU devices are typically installed at the kitchen tap. See the April 21, 2000 NODA for more details.

Limitations Footnotes: Technologies for Radionuclides:

[a] The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

[b] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance.

[c] Reject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in the SWTR compliance technologies table.

[d] The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

[e] Removal efficiencies can vary depending on water quality.

[f] This technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

[g] This technology is most applicable to small systems that already have filtration in place.

[h] Handling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.

[i] Assumes modification to a coagulation/filtration process already in place.

TABLE C.—BAT FOR SMALL COMMUNITY WATER SYSTEMS FOR THE RADIONUCLIDES LISTED IN § 141.66

Contaminant	Compliance technologies [1] for system size categories (population served)		
	25–500	501–3,300	3,300–10,000
Combined radium-226 and radium-228	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9.
Gross alpha particle activity	3, 4	3, 4	3, 4.
Beta particle activity and photon activity	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4.
Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11.

[1] **Note:** Numbers correspond to those technologies found listed in the table B to this paragraph.

(2) A State shall require community water systems to install and/or use any treatment technology identified in Table A to this section, or in the case of small water systems (those serving 10,000 persons or fewer), Table B and Table C

of this section, as a condition for granting a variance except as provided in paragraph (a)(3) of this section. If, after the system's installation of the treatment technology, the system cannot meet the MCL, that system shall be eligible for a variance under the provisions of section 1415(a)(1)(A) of the Act.

(3) If a community water system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment technologies identified in this section would only achieve a de minimus reduction in the contaminant level, the State may issue a schedule of compliance that requires the system being granted the variance to examine other treatment technologies as a condition of obtaining the variance.

(4) If the State determines that a treatment technology identified under paragraph (a)(3) of this section is technically feasible, the Administrator or primacy State may require the system to install and/or use that treatment technology in connection with a compliance schedule issued under the provisions of section 1415(a)(1)(A) of the Act. The State's determination shall be based upon studies by the system and other relevant information.

(5) The State may require a community water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance or an exemption from the requirements of § 141.66 of this chapter, to avoid an unreasonable risk to health.

(6) Community water systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of § 141.66 of this chapter must meet the requirements specified in either § 142.62(g)(1) or § 142.62(g)(2) and (g)(3).

(7) Community water systems that use point-of-use or point-of-entry devices as a condition for obtaining a variance or an exemption from the radionuclides NPDWRs must meet the conditions in § 142.62(h)(1) through (h)(6).

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Federal Register

Thursday,
December 7, 2000

Part III

Department of Commerce

United States Patent and Trademark Office

37 CFR Part 1

Rules to Implement Optional Inter Partes Reexamination Proceedings; Final Rule

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB04

Rules to Implement Optional Inter Partes Reexamination Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Patent and Trademark Office (the Office) is amending its rules of practice in patent cases to provide revised procedures for the reexamination of patents and thereby implement certain provisions of the American Inventors Protection Act of 1999. The American Inventors Protection Act of 1999 included an amendment to the Patent Act to authorize the extension of reexamination proceedings via an optional *inter partes* (multiparty) reexamination procedure in addition to the present *ex parte* (single party) reexamination procedure as a means for improving the quality of United States patents. The Office intends, through this amendment of its rules, to provide patent owners and the public with guidance on the procedures that the Office will follow in conducting optional *inter partes* reexamination proceedings in addition to the present *ex parte* reexamination proceedings.

The American Inventors Protection Act of 1999 also made other miscellaneous changes to the Patent Act which relate to reexamination, and it is intended that this amendment of the Office's rules will implement those changes relating to reexamination.

DATES: *Effective Date:* February 5, 2001.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Schor or Gerald A. Dost, Senior Legal Advisors. Kenneth M. Schor may be contacted (a) by telephone at (703) 305–1616; (b) by mail addressed to: U.S. Patent and Trademark Office, Box Comments—Patents, Commissioner for Patents, Washington, D.C. 20231, marked to the attention of Kenneth M. Schor; (c) by facsimile transmission to (703) 872–9408, marked to the attention of Kenneth M. Schor; or (d) by electronic mail message over the Internet addressed to *reexam.rules@uspto.gov* and titled ''*Inter Partes* Reexamination.'' Gerald A. Dost may be contacted (a) by telephone at (703) 305–1616; (b) by mail addressed to: U.S. Patent and Trademark Office, Box Comments—Patents, Commissioner for Patents, Washington, D.C. 20231, marked to the attention of Gerald A. Dost; (c) by facsimile transmission to (703) 308–6916, marked to the attention of Gerald A. Dost; or (d) by electronic mail message over the Internet addressed to reexam.rules@uspto.gov and titled ''*Inter Partes* Reexamination.''

SUPPLEMENTARY INFORMATION:

Background

This final rule sets forth distinct procedures directed toward determining and improving the quality and reliability of United States patents. The procedures provide for the optional *inter partes* reexamination procedures in addition to the present *ex parte* reexamination procedures for the reexamination of patents as provided for by the American Inventors Protection Act of 1999 as part of the conference report (H. Rep. 106–479) on H.R. 3194, Consolidated Appropriations Act, Fiscal Year 2000. The text of the American Inventors Protection Act of 1999, is contained in title IV of S. 1948, the Intellectual Property and Communications Omnibus Reform Act of 1999 (Public Law 106–113), the Act which is incorporated by reference in Division B of the conference report. The procedures also provide for implementation of other miscellaneous changes to the reexamination of patents also provided for in Public Law 106–113.

In August 1995, the Office published proposed rules in anticipation of H.R. 1732, 104th Cong., 1st Sess. (1995), a predecessor of the present *inter partes* reexamination statute. H.R. 1732 did not, however, mature into a statute. The August 1995 Notice of Proposed Rulemaking entitled ''Rules of Practice in Patent Cases; Reexamination Proceedings,'' was published in the **Federal Register** at 60 FR 41035 (August 11, 1995) and in the *Official Gazette* at 1177 Off. Gaz. Pat. Office 130 (August 22, 1995). Sixteen sets of written comments were received in response to the August 1995 Notice of Proposed Rulemaking. A public hearing was held at 9:30 a.m. on September 20, 1995. Eight individuals offered oral comments at the hearing.

In response to the 1999 Public Law 106–113, a notice of proposed rulemaking was published in the **Federal Register** on April 6, 2000, at 65 FR 18154–18186, and in the *Official Gazette* on May 23, 2000, at 1234 O.G. 93–123. The 2000 notice of proposed rulemaking addressed, and took into consideration, the comments received in response to the 1995 proposed rules. A public hearing was not held.

Discussion of General Issues Involved

This final rule is in response to Public Law 106–113, the Act which resulted from suggestions and comments to the Administration by the public, bar groups, and the August 1992 Advisory Commission on Patent Law Reform suggesting more participation in the reexamination proceeding by third party requesters. Under the *inter partes* reexamination rules set forth in this final rule notice, third party requesters will have greater opportunity to participate in reexamination proceedings in keeping with the spirit and intent of the new law. At the same time, participation will be limited to minimize the costs and other effects of reexamination requests on patentees, especially individuals and small businesses.

Ex parte reexamination proceedings filed under chapter 30 of 35 U.S.C. (both before and after the effective date, November 29, 1999, of the new law) will continue to be governed by 37 CFR 1.510–1.570. The final rules for optional *inter partes* reexamination proceedings under chapter 31 of 35 U.S.C. have been numbered 37 CFR 1.902–1.997.

The effective date of the statute with respect to the optional *inter partes* reexamination proceedings as well as to the existing *ex parte* reexamination proceedings is complex. With the exception of the amendments to 35 U.S.C. 41(a)(7) directed to the revival of terminated *ex parte* and *inter partes* reexamination proceedings, the new statute and the conforming amendments to the present statute take effect on the date of enactment, November 29, 1999. The changes, however, only apply to a reexamination of a patent that issues from an original application which was filed in the United States on or after November 29, 1999. Thus, for *inter partes* reexaminations, the effective date language (in section 4608 of S. 1948) limits the applicability of the new *inter partes* reexamination chapter 31 of 35 U.S.C., and that of the conforming amendments to 35 U.S.C. 134, 141, 143 and 145, to any patent that issues from an original application filed in the United States on or after November 29, 1999, the effective date of Public Law 106–113. For *ex parte* reexaminations filed under chapter 30 of 35 U.S.C., the conforming amendments to 35 U.S.C. 134, 141, 143 and 145, apply only to those *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application that is filed in the United States on or after November 29, 1999. The conforming amendments to 35 U.S.C. 134, 141, 143 and 145,

correspondingly, will not apply to *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application filed in the United States prior to November 29, 1999. An ''original application'' filed in the United States prior to November 29, 1999, is defined in the notice entitled ''Guidelines Concerning the Implementation of Changes to 35 U.S.C. 102(g) and 103(c) and the Interpretation of the Term 'Original Application' in the American Inventors Protection Act of 1999'' which notice was published in the *Official Gazette* at 1233 Off. Gaz. Pat. Office 54 (April 11, 2000). The phrase ''original application'' is interpreted to encompass utility, plant and design applications, including first filed applications, continuations, divisionals, continuations-in-part, continued prosecution applications and the national stage phase of international applications. Therefore, the optional *inter partes* reexamination, and the application of the conforming amendments to 35 U.S.C. 134, 141, 143 and 145 for both *inter partes* and *ex parte* reexamination proceedings is applicable to patents which issue from all applications (except for reissue applications) filed on or after November 29, 1999. A patent which issues from an application filed prior to November 29, 1999, with a request for continued examination (defined in section 4403 of the Act) made on or after May 29, 2000, however, is not eligible for the optional *inter partes* reexamination procedure nor application of the conforming amendments discussed above, because a request for continued examination is not a filing of an application.

The conforming amendments also amend 35 U.S.C. 41(a)(7) to include the words ''any reexamination proceeding'' under the ''unintentional'' revival provisions of the statute to provide the patent owner with a remedy for an unintentionally delayed response in any reexamination proceeding. These words ''any reexamination proceeding'' clearly make this section applicable to both *ex parte* reexaminations and *inter partes* reexaminations. The effective date of this amendment to 35 U.S.C. 41(a)(7) is one year after the date of enactment of the Act, or November 29, 2000. See section 4608 of S. 1948. Thus, as of November 29, 2000, any *ex parte* or *inter partes* reexamination filed before, on, or after November 29, 2000, is subject to the ''unintentional'' revival provisions of the statute.

Regarding the reexamination fee, 35 U.S.C. 41(d) requires the Commissioner of the United States Patent and Trademark Office (the Commissioner) to set the fee for the new optional *inter partes* reexamination at a level which will recover the estimated average cost of the reexamination proceeding to the Office. The estimated average cost is $8,800 for an *inter partes* reexamination proceeding. The difference in the cost between an *ex parte* reexamination ($2,520) and an *inter partes* reexamination ($8,800) takes into account that the Office will expend substantially more resources for examination, supervision, training, etc., where the third party requester participates in an *inter partes* reexamination proceeding, and takes into account the additional processing steps that are expected during an *inter partes* reexamination proceeding.

Discussion of the Major Specific Issues Involved (1999 Statute)

The rules relating to *inter partes* reexamination proceedings are directed to the provisions set forth in chapter 31 of title 35 of the United States Code (35 U.S.C. 311–318). This Chapter provides for the filing of requests for *inter partes* reexamination, decisions on such requests, *inter partes* reexamination, appeal from *inter partes* reexamination decisions, and the issuance of a certificate at the termination of the *inter partes* reexamination proceedings.

This final rule contains a number of changes to the text of the rules that were proposed for comment. The significant changes (as opposed to grammatical corrections) are discussed below. Familiarity with the Notice of Proposed Rulemaking is assumed.

Section 4732 of the American Inventors Protection Act of 1999 changed (among other things) the title ''Commissioner'' to ''Director.'' In the Notice of Proposed Rulemaking the title ''Commissioner'' was revised to read ''Director'' in the current rules, or portions of the current rules, that were proposed to be amended; and in the proposed new rules the new title ''Director'' was used in place of the former title ''Commissioner.'' In this final rule, however, the title ''Commissioner'' is not being changed to ''Director'' where it appears in the current rules of practice involved in this final rule, and the title ''Commissioner'' and not ''Director'' is used in the new rules adopted in this final rule. This is because legislation is pending before Congress that (if enacted) would restore the former title ''Commissioner.'' *See* Intellectual Property Technical Amendments Act of 2000, H.R. 4870, 106th Cong. (2000).

The USPTO received 10 sets of written comments (from Intellectual Property Organizations, Law Firms, Businesses and Patent Practitioners) in response to the Notice of Proposed Rulemaking. The written comments have been analyzed. General comments are addressed as a group separately from the specific rules. Comments directed to specific rules and the response to each comment are provided with the discussion of the specific rule. Comments in support of proposed rules generally have not been reported in the responses to comments section.

Discussion of General Comments

General Comment 1: Examiner Assignment (selection of examiner)

Two comments were received directed to the selection of the examiner who will be assigned the *inter partes* reexamination. One comment suggested that the ''rules'' rather than policy should provide that an *inter partes* reexamination be handled by an examiner other than the one who originally examined the application.

The second comment expressed support for the Office's announced intention to adopt a policy that a different examiner, other than those actually involved in the examination and issuing of the patent, will be assigned the *inter partes* reexamination.

Response to General Comment 1

The Office's intention to adopt a policy that a different examiner, other than those actually involved in the examination and issuing of the patent, will be assigned the *inter partes* reexamination was announced in the proposed rules. *See* Notice of proposed rulemaking, Rules to Implement Optional Inter Partes Reexamination Proceedings, 65 FR 18154, 18157–58 (April 6, 2000), 1234 OG 93, 96 (May 23, 2000), Response to Issue 4, first paragraph. As noted therein, studies conducted by the Office as to the selection of the examiner have not shown any examiner bias irrespective of whether the same or a different examiner handles the reexamination. The same examiner should not be biased toward confirming patentability, because a reexamination is not a rehash of old issues, but rather, the resolution of a new question of patentability. In spite of these findings, the Office is, for the most part, adopting the comments suggesting assignment of the reexamination to an examiner other than the one who originally examined and issued the patent. The new policy is being adopted in order to eliminate any perception by the public of bias by the original examiner who handled the patent. The change in the manner of examiner selection, however, will be implemented as a matter of policy,

rather than by rule change. Specific guidance as to policies, practice and procedure as they will apply to examiner selection in *inter partes* reexamination proceedings will be forthcoming in a separate *Official Gazette* notice to be published in conjunction with the final rules on *inter partes* reexamination.

General Comment 2: Panel Review of Examiner Actions

Two comments were received directed to the review of the examiner's actions during the examination process. One comment expressed support for the Office's announced intention to adopt a policy to hold a panel review of the examiner's proposed action at selected times during the examination. The comment suggested that such a review, however, be conducted of each action by the examiner that includes an action on the merits of the claims rather than the announced intention of holding such a review just prior to the decision to order reexamination and at the close of prosecution.

The second comment expressed support for the proposed policy for better review of the (single) examiner's decision during the reexamination. The comment, however, erroneously identified the announced change in policy as a rule proposal.

Response to General Comment 2

The Office's intention to adopt a policy to hold a patentability review conference (panel review) during the examination process was announced in the proposed rules. *See* Notice of proposed rulemaking, Rules to Implement Optional Inter Partes Reexamination Proceedings, 65 FR 18154, 18158 (April 6, 2000), 1234 OG 93, 96 (May 23, 2000), Response to Issue 4, last paragraph. It was noted therein that, in order to provide a thorough review by a team of examiners, a practice was being considered to hold a panel review just prior to when the decision on the request for reexamination (order/denial) is issued and at the close of prosecution (*i.e.,* just prior to ''allowance'' of the reexamination or just prior to issuing a right of appeal notice and final rejection). The panel review would be similar to the appeal conference review done in an application on appeal to the Board of Patent Appeals and Interferences. Upon reconsideration, it has been decided that a panel review will not be conducted just prior to the decision on the request for reexamination (order/denial) and just prior to the ''allowance'' of the reexamination, *i.e.,* issuance of a Notice of Intent to Issue a Reexamination Certificate (NIRC). A panel review is not necessary at the time of the initial determination to order/deny the request for *inter partes* reexamination. If reexamination is ordered, prosecution proceeds, and both the patent owner and the third party requester will have the opportunity to address the position of the examiner set forth in the first Office action. Further, patentability panel reviews will be conducted later in the examination of the case. If the reexamination request is denied, the third party requester has the opportunity under § 1.927 to request a *de novo* review by the TC Group Director of the examiner's decision denying reexamination. A panel review is not necessary at the time of the ''allowance'' of the reexamination because the ''allowance'' of the reexamination in an *inter partes* reexamination proceeding is essentially a ministerial act performed (a) after patent owner fails to respond to an Office action and no claims have been found patentable, (b) after a ''right of appeal notice and final rejection'' is issued, where neither party timely appeals (or the appeal is dismissed), or (c) after a final decision by the Board of Patent Appeals and Interferences or the court where no further appeal is timely taken. Accordingly, no panel review is needed just prior to the decision on the request for reexamination (order/denial) and just prior to issuance of the NIRC. Rather, the two panel reviews will be held at the critical stages of the proceeding or just prior to issuing an action closing prosecution and just prior to issuing a right of appeal notice and final rejection. Specific guidance as to policies, practice and procedure as they will apply to panel review of examiner's actions in *inter partes* reexamination proceedings will be forthcoming in a separate Official Gazette Notice to be published in conjunction with the final rules on *inter partes* reexamination.

It should further be noted that appeal conferences are already mandatory in *ex parte* reexamination proceedings just prior to issuance of an examiner's answer to an appeal to the Board of Patent Appeals and Interferences. Such appeal conferences will also be mandatory in *inter partes* reexamination proceedings. The two patentability panel reviews coupled with the appeal conference will provide three instances of multi-examiner reviews available in any *inter partes* reexamination proceeding which is prosecuted to the appeal stage.

As to the first comment's suggestion that a panel review be conducted of ''each'' action by the examiner that includes an action on the merits of the claims, the Office plans to provide oversight by a legal advisor for each such action (as discussed below in general comment 3) in order to ensure that the examiner addresses each issue presented by parties to the proceeding. This oversight, coupled with the three multi-examiner reviews available in any *inter partes* reexamination proceeding which is prosecuted to the appeal stage, should ensure a high-quality, multi-dimensional examination of the proceeding.

As to the second comment supporting the ''rule proposal'' for better review of the examiner's decisions, it should be noted that a ''rule'' was not proposed for implementation of this practice. The Notice of Proposed Rulemaking stated the practice would be implemented as a matter of policy rather than by rule.

General Comment 3: Where Reexamination is Conducted in Office

Three comments were directed to where in the Office, and by whom, the reexamination will be conducted. The first comment suggested that the *inter partes* reexamination proceeding should be conducted by a council system comprising experienced examiners.

The second comment suggested that a special Reexamination Corps be established for conducting the *inter partes* reexamination proceeding. The examiners in the special Reexamination Corps would have an independent status such as that of the members of the Board of Patent Appeals and Interferences.

The third comment expressed support for the Office's announced intention to consider the creation of a special group of legal advisors to assist the patent examiner in an *inter partes* reexamination proceeding.

Response to General Comment 3

As to the first and second comments suggesting a council system of multiple examiners, or a special ''Board'' status for the examiner, the comments are not adopted in view of the Office's intention to provide oversight by legal advisors as set forth below.

The third comment supports oversight of the examiners by legal advisors consistent with the Office's intention as announced in the proposed rules. *See* Notice of Proposed Rulemaking, Rules to Implement Optional Inter Partes Reexamination Proceedings, 65 FR 18154, 18158 (April 6, 2000), 1234 OG 93, 96 (May 23, 2000), Response to Issue 4, second paragraph. As noted therein, the Office is considering the creation of a special group/unit having legal advisors trained in *inter partes*

reexamination procedures to oversee the examination of the *inter partes* reexamination by the patent examiner in the examining group. For technical expertise, an examiner selected from the examining group will be assigned the reexamination. The advantage of providing oversight to ensure timely, full, and appropriate treatment of all issues is that it will include (a) an examiner familiar with the technology to make the patentability decisions, and (b) legal advisors to provide uniformity of the reexamination practice and procedure. Specific guidance as to policies, practice and procedure as they will apply to policy oversight of examiner's actions in *inter partes* reexamination proceedings will be forthcoming in a separate *Official Gazette* notice to be published in conjunction with the final rules on *inter partes* reexamination.

General Comment 4: Definition of the Statutory Term ''Privies''

One comment was received directed to the statutory term ''privies.'' The term is used in 35 U.S.C. 317 to dictate which parties are prohibited from filing a reexamination, based upon action by other parties with whom they are in privity. The comment states that this important statutory term is not defined in either the statute or the rules, and is dangerously ambiguous without a definition.

Response to General Comment 4

To the extent that the comment proposed that ''privies'' be defined in the rules package, it is not adopted. The Office, as the sole agency that administers the patent statute, properly interprets statutory language in the first instance, subject to review by the courts. The question of whether a party is a privy must be decided on a case-by-case basis, evaluating all the facts and circumstances of each individual situation. It would not be appropriate at this time to provide an ''all encompassing'' definition, that might not account for facts which could arise in the future, which facts cannot be anticipated.

It should be noted that the Office generally will not have a need to resolve the factual issue of whether or not one party is a privy of another party. Section 1.915(b)(7) requires a third party requester to certify that the estoppel provisions of § 1.907 do not prohibit the filing of the *inter partes* reexamination request, and the Office does not intend to look beyond this required certification. It is only in the rare instance where a challenge to the accuracy of the certification is raised by the patent owner, that the question would then need to be addressed.

General Comment 5: Incorporation of Certain Case Law Into the Rules

One comment asked whether the rules would codify the case law relating to claim construction, claim scope, the burden of establishing facts and the burden of persuasion (and their standards) as they apply to reexamination.

Response to General Comment 5

The comment is not adopted. The rules will not state how the Office should view claim construction, claim scope, the burden of establishing facts and the burden of persuasion (and their standards) in reexamination. Rather, the Office's view of these issues and other like issues will continue to track the case law which is a continually evolving body of law. Instructions to the examiner on these issues will continue to be provided in *Official Gazette* Notices and in the Manual of Patent Examining Procedure.

Discussion of Specific Rules and Response to Comments

Section 1.4(a)(2) is being amended to include *inter partes* reexamination under §§ 1.902–1.997. No comment was received on this section. It is adopted as proposed.

Section 1.6(d)(5) is being amended to include filing a request for *inter partes* reexamination under § 1.913 as an exception to the use of facsimile transmission. No comment was received on this section. It is adopted as proposed.

The Notice of Proposed Rulemaking included a proposed amendment to § 1.17 to implement § 4605(a) of the American Inventors Protection Act of 1999. This proposed amendment has, however, already been made in the final rule to implement eighteen-month publication of patent applications. See Changes to Implement Eighteen-Month Publication of Patent Applications, Final Rule, 65 FR 57024 (September 20, 2000); 1239 Off. Gaz. Pat. Office 63 (October 10, 2000). Accordingly, it is no longer necessary to make that amendment of the rule in the present *inter partes* reexamination rule package. Section 1.17 was amended in the final rule to implement eighteen-month publication so that the title includes a reference to reexamination to clearly indicate that the enumerated fees may apply to reexaminations as well as to patent applications. Section 1.17(l) was amended to reflect the fact that in the case of reexaminations, petitions for revival of a reexamination proceeding terminated for an unavoidable failure of the patent owner to timely respond will require the fees of $55 for a small entity and $110 for a large entity. Also, § 1.17(m) was amended to reflect the fact that in the case of reexaminations, petitions for revival of a reexamination proceeding terminated for an unintentional failure to timely respond will require the fees of $605 for a small entity and $1,210 for a large entity. Note, however, that the unintentional revival provisions of the statute are not effective in any reexamination until November 29, 2000. No comment was received on this section. Sections 1.17(l) and (m) as proposed in the Notice of Proposed Rulemaking for the present rule package were adopted in the final rule to implement eighteen-month publication of patent applications.

Section 1.20(c) is being amended to reflect the fact that a request for an *ex parte* reexamination under § 1.510(a) will require a filing fee of $2,520; and that a request for an *inter partes* reexamination under § 1.915(a) will require a filing fee of $8,800. For any request for *inter partes* reexamination filed prior to the effective date of this final rule, the request must be accompanied by the $2,520.00 fee for a request for reexamination set forth in § 1.20(c) (as in effect prior to the effective date of this final rule). The $6,280.00 balance of the $8,800.00 fee set forth in § 1.20(c)(2) will be due on the effective date of this final rule in any *inter partes* reexamination still pending on the effective date of this final rule. Three comments were received and directed to this section.

Comments: The first comment noted that the Office reduced the filing fee of $11,000, proposed in the 1995 proposed rules, to $8,800 in the 2000 Notice of Proposed Rulemaking, but gave no explanation for the reduction. The comment opines that the reason for the reduction was the many objections to the high fee. The comment recommends that the Office consider further reducing the fee or at least make arrangements for conducting a review of the actual costs involved in *inter partes* reexaminations after the procedure has been in effect for a reasonable amount of time.

The second comment suggested that considering the advantages and disadvantages to the third party requester involved in reexamination, the *inter partes* reexamination is not significantly more advantageous to the third party requester than is *ex parte* reexamination. The comment noted the difference between the $2,520 fee for *ex parte* reexamination and the $8,800 fee for *inter partes* and opined that the high fee will severely curtail the use of *inter*

partes reexamination. The comment suggested the third party requester should not be burdened with the full cost of *inter partes* reexamination, and that an appropriate reexamination filing fee would be less than $4,000.

The third comment suggested the $8,800 *inter partes* reexamination filing fee will be an effective barrier to an intended aim of *inter partes* reexamination, *i.e.,* to provide a viable alternative to the great cost and uncertainty of patent litigation.

Response to Comment: The first comment speculates as to why the filing fee was reduced from $11,000 as proposed in the 1995 Notice of Proposed Rulemaking to $8,800 as proposed in the 2000 Notice of Proposed Rulemaking. The fee was readjusted when, upon further analysis, the Office realized that the proposed $11,000 fee should not have included projected costs incurred by the Board of Patent Appeals and Interferences and the Solicitor's Office. Appeal fees are set by statute under 35 U.S.C. 41(a)(6) and thus are not cost recoverable as part of the reexamination filing fee under 35 U.S.C. 41(d). Accordingly, the proposed filing fee was adjusted downwardly.

As to the first comment suggesting re-evaluating the filing fee after the procedure has been in effect for a reasonable amount of time, this is required by statute. Section 4606 of S. 1948 requires the Commissioner, not later than November 29, 2004, to submit to the Congress a report evaluating whether the *inter partes* reexamination proceedings established by this legislation is inequitable to any of the parties. Such evaluation would include an analysis of the filing fee, and its burden on the third party requester.

The second comment suggests (1) that the third party requester should not be burdened with the full cost of the *inter partes* reexamination, and (2) that a reduced fee of less than $4,000 be set. The statute, however, requires that the third party requester pay the reexamination filing fee established by the Commissioner in accordance with 35 U.S.C. 41(d). Further, the reexamination fees must under 35 U.S.C. 41(d) fully recover the cost of the reexamination and the full amount of the estimated fee must be charged.

As to the second and third comments asserting that the high fee would severely curtail the use of *inter partes* reexamination, it is noted that the overall costs of requesting and participating in an *inter partes* reexamination would include, in addition to the $8,800 filing fee, the attorney/agent fees throughout the proceeding (including appeal costs) and other prosecution-related costs (testing, declarations, etc.). *Inter partes* reexaminations will be hotly-contested, adversarial proceedings. The estoppel provisions of the statute will maximize the third party requester's incentives to prevail in the reexamination. The overall cost of such proceedings to the third party requester could easily reach $50,000 to $150,000, the amount varying depending on variables such as parties, number of claims, type of evidence needed, etc. The $8,800 filing fee is not perceived to be excessive in light of the potential overall cost of an *inter partes* reexamination proceeding, and thus the filing fee would not in itself be a deterrent to the filing of a request for *inter partes* reexamination. In those instances where a member of the public deems the $8,800 cost of an *inter partes* reexamination too high for his or her needs or purposes, the filing of an *ex parte* reexamination remains available at a relatively low filing fee of $2,520. The comments are not adopted, and the section is adopted as proposed.

Section 1.25(b), which provides for charging fees to deposit accounts, is being amended to include a reference to *inter partes* reexaminations under § 1.913. No comment was received on this section. It is adopted as proposed.

Section 1.26 is being amended so as to reflect the refund to the reexamination requester where the Commissioner decides not to institute a reexamination proceeding. For *ex parte* reexaminations filed under § 1.510, a refund of $1,690 will be made to the reexamination requester. For *inter partes* reexaminations filed under § 1.913, a refund of $7,970 will be made to the reexamination requester. In both cases, $830 of the filing fee will be retained, which amount reflects the estimated average cost of the reexamination proceeding through the denial of the reexamination request. No comment was received on this section. It is adopted as proposed.

Section 1.112 is being amended to also provide that after the patent owner response under § 1.945 and the third party requester comments under § 1.947, the patent undergoing *inter partes* reexamination will be reconsidered and again examined. Section 1.112 is being further amended so that the last sentence reflects the fact that in the case of *inter partes* reexaminations, the right to reply may be limited by an action closing prosecution under § 1.949 (prior to the final action) or by a right of appeal notice under § 1.953 (which is a final action). No comment was received on this section. It is adopted as proposed.

Sections 1.113 and 1.116. Section 1.113, which provides for a final rejection or action, is being amended to limit its applicability to applications and *ex parte* reexaminations filed under § 1.510. For final rejections or actions in an *inter partes* reexamination filed under § 1.913, new § 1.953 will control. Section 1.116 is being amended so that the title includes a reference to an action closing prosecution and a right of appeal notice in *inter partes* reexaminations. Section 1.116(b), which provides for amendments after final action, is being amended to apply to amendments filed by the patent owner after an action closing prosecution in *inter partes* reexaminations filed under § 1.913. Also, § 1.116(b) is being amended to preclude amendments after the right of appeal notice under § 1.953 except as provided for in § 1.116(d). Section 1.116(d), which provides for amendments after the decision on appeal, is being amended to provide for amendments after the decision on appeal in an *inter partes* reexamination. One comment was directed to these sections.

Comment: The comment notes that the proposed amendments to §§ 1.113 and 1.116 are based on a version of those rules that is no longer in effect. Sections 1.113 and 1.116 were amended by virtue of the May 29, 2000 interim rule published March 20, 2000, at 65 FR 14865 to refer, *inter alia,* to the new § 1.114 and requests for continued examination. The comment suggests that it is not the intent of the reexamination rules to obviate the changes made by the May 29, 2000, interim rule and therefore the changes made by the reexamination rules should be based on the language of §§ 1.113 and 1.116 as amended by the interim rule of May 29, 2000.

Response to Comment: The comment is adopted. The final rules of this package have been revised to amend the most current version of the rules of practice.

Section 1.121(i), which provides for the manner of making amendments to the description and claims in reexamination proceedings, is being amended to specify that such amendments are made in accordance with §§ 1.530(d)—(j) in both *ex parte* reexaminations filed under § 1.510 and *inter partes* reexaminations filed under § 1.913. No comment was received on this section. It is adopted as proposed, other than to change the subsection designations for conformance with the most current version of the rules of practice as needed.

Sections 1.136(a)(2) and (b), which provide for filing extensions of time in

applications, are being amended to make it clear that § 1.956 is controlling for extensions of time in *inter partes* reexaminations. No comment was received on this section. It is adopted as proposed.

The notice of proposed rulemaking included a proposed amendment to § 1.137 to implement § 4605(a) of the American Inventors Protection Act of 1999. This proposed amendment has, however, already been made in the final rule to implement eighteen-month publication of patent applications. See Changes to Implement Eighteen-Month Publication of Patent Applications, Final Rule, 65 FR 57024 (September 20, 2000); 1239 Off. Gaz. Pat. Office 63 (October 10, 2000). Accordingly, it is no longer necessary to make that amendment of the rule in the present *inter partes* reexamination rule package. Section 1.137, which provides for revival of abandoned applications or lapsed patents, was amended in the final rule to implement eighteen-month publication to provide for revival of *ex parte* reexamination proceedings terminated under § 1.550(d), for revival of *inter partes* reexamination proceedings terminated under § 1.957(b), or for revival of rejected claims terminated under § 1.957(c) in an *inter partes* reexamination proceeding where further prosecution has been limited to claims found allowable at the time of the failure to respond.

In the final rule to implement eighteen-month publication, the title was amended to include a terminated reexamination proceeding. Section 1.137(a) was amended to include revival of unavoidably terminated reexamination proceedings. The unavoidable delay provisions of 35 U.S.C. 133 are imported into, and are applicable to, reexamination proceedings by 35 U.S.C. 305 and 314. See In re Katrapat, 6 USPQ2d 1863, 1865 (Comm'r Pat. 1988). Section 1.137(b) was amended to provide for revival of unintentionally terminated reexamination proceedings. The unintentional delay fee provisions of 35 U.S.C. 41(a)(7) are imported into and are applicable to all reexamination proceedings by section 4605 of S. 1948. Note that these changes pertain to *all* reexaminations (*i.e.,* both *ex parte* reexaminations filed under § 1.510 and *inter partes* reexaminations filed under § 1.913) and were stated by statute to become effective on November 29, 2000 (one year after enactment of the statute). Section 1.137(d) was amended to provide that extensions of time for requesting reconsideration of a decision dismissing or denying a petition requesting revival of a terminated reexamination proceeding under §§ 1.137(a) or (b) must be filed under § 1.550(c) for a terminated *ex parte* reexamination proceeding, or under § 1.956 for a terminated *inter partes* reexamination proceeding. No comment was received on this section. Section 1.137 was adopted in the final rule to implement eighteen-month publication of patent applications in the manner as proposed in the notice of proposed rulemaking for the present rule package.

Sections 1.181(a) and (c) are being amended to reflect the fact that a petition thereunder may be filed in both *ex parte* and *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

Section 1.191, which provides for appeal to the Board of Patent Appeals and Interferences by the patent owner from any decision adverse to patentability, is being amended so as to be applicable to applications and *ex parte* reexaminations filed under § 1.510 but not to *inter partes* reexamination proceedings filed under § 1.913. Specifically, § 1.191 points out that appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings filed under § 1.913 are controlled by §§ 1.959 through 1.981, and that §§ 1.191 through 1.198 are not applicable to appeals in *inter partes* reexamination proceedings filed under § 1.913. No comment was received on this section. It is adopted as proposed.

Section 1.191 is further being amended to distinguish between (1) *ex parte* reexamination proceedings filed under § 1.510 for reexamination of patents that issued from an original application filed prior to November 29, 1999 (where an appeal is permitted when claims have been twice or finally rejected), and (2) *ex parte* reexamination proceedings filed for reexamination of patents that issued from an original application filed on or after November 29, 1999 (where an appeal is only possible when claims have been finally rejected and is not possible where claims have been twice rejected but not finally rejected). This date distinction is necessitated by the effective date of the conforming amendments made to 35 U.S.C. 134 in S. 1948 being keyed to the original filing date of the application which issued as the patent under reexamination. The effective date language in section 4608 of S. 1948 limits the applicability of the conforming amendments to 35 U.S.C. 134, 141, 143 and 145, to a reexamination of a patent that issues from an original application which is filed on or after November 29, 1999. Thus, the conforming amendments to 35 U.S.C. 134, 141, 143 and 145 apply only to those *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application which is filed on or after November 29, 1999. The conforming amendments do not apply to *ex parte* reexamination proceedings filed under § 1.510 for patents that have issued or will issue from an original application which was filed prior to November 29, 1999. No comment was received on this section. It is adopted as proposed.

Section 1.301, which provides for appeal by the patent owner in a reexamination proceeding to the U.S. Court of Appeals for the Federal Circuit, is being amended to be applicable to *ex parte* reexamination proceedings filed under § 1.510 and also to indicate, that for *inter partes* reexamination proceedings filed under § 1.913, § 1.983 is controlling. No comment was received on this section. It is adopted as proposed.

Section 1.303(a) and (b), which provide for remedy by civil action under 35 U.S.C. 145 for the patent owner in a reexamination proceeding, are being amended so as to be applicable only to *ex parte* reexaminations filed under § 1.510 for patents that issue from an original application which is filed prior to November 29, 1999. This date distinction is necessitated for reasons analogous to those set forth in the discussion of § 1.191 above. Section 1.303 is further amended by adding a new subsection (d) to clearly note that no remedy by civil action under 35 U.S.C. 145 is available to the patent owner for *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application which is filed on or after November 29, 1999, and for any *inter partes* reexamination proceedings filed under § 1.913. No comment was received on this section. It is adopted as proposed.

Section 1.304, which provides for the time for appeal by the patent owner in a reexamination proceeding to the U.S. Court of Appeals for the Federal Circuit, is being amended so as to make it applicable to *inter partes* reexamination proceedings filed under § 1.913. No comment was received on this section. It is adopted as proposed.

The section heading (title) to subpart D and the undesignated center headings for subpart D are being amended by inserting ''*Ex Parte*'' before ''Reexamination'' to provide that the reexamination rules in this subpart generally apply to *ex parte* reexamination proceedings. Where an *ex parte* rule also applies to *inter partes*

reexamination, it is explicitly incorporated by reference into the *inter partes* reexamination rules, *e.g.,* § 1.933 (patent owner duty of disclosure) incorporates § 1.555; and § 1.943 (requirement of responses, comments and briefs) incorporates § 1.52. No comment was received on these changes. They are adopted as proposed.

Section 1.501(a), which provides for citations of prior art in patent files, is being amended to provide that a citation shall be entered in the patent file except as set forth in § 1.502 (newly created) and § 1.902. Section 1.501(a) is further amended by deleting the criteria for the processing of a prior art citation filed during an *ex parte* reexamination, and moving that criteria to § 1.502 newly created for that purpose. One comment was received directed to § 1.501.

Comment: The comment suggests the Office should re-address the prohibition on a third party from submitting prior art patents and printed publications for entry into an *ex parte* reexamination proceeding after the order to reexamine has been mailed with the prohibition applying, even where the prior art was unavailable to a third party requester at the time the *ex parte* request was filed, or known only to another member of the public. The comment argues that the present system which requires the third party to file another *ex parte* request for reexamination (which includes the new prior art) and that merger of the reexamination proceedings is a cumbersome, burdensome and time-delaying system as compared to, for example, simply permitting the entry of the new prior art and providing for one more reexamination Office action and response for new prior art found to be relevant.

Response to Comment: When promulgating the reexamination rules in 1981, it was the position of the Office that an *ex parte* proceeding best served the interests of all, and best complied with the intent of the 1980 statute. To preserve the *ex parte* nature of the proceeding, it was decided that consideration of citations of prior art submitted after the reexamination order will be delayed until the reexamination proceeding has terminated, unless the citation is submitted by the patent owner or a third party requester in a separate reexamination request or in a reply to the patent owner's statement. While the filing of a separate request for reexamination can add some delay to the proceeding, this delay would not be extensive. In contrast, permitting a third party to file citations at any time for consideration by the examiner could seriously delay the reexamination proceeding and militate against the ''special dispatch'' requirement of the statute.

New § 1.502 provides for the processing of prior art citations submitted during an *ex parte* reexamination proceeding. The substance of § 1.502 was previously contained in § 1.501(a), but was separated out as a new section for clarity. Once *ex parte* reexamination has been ordered, only citations by the patent owner under § 1.555 and by a third party requester in a filing under either § 1.510 or § 1.535 will be entered during the pendency of the reexamination proceeding. Citations by other parties (who are not a party to the reexamination) filed during the pendency of the reexamination proceeding will not be entered into the patent file or the reexamination file until the reexamination proceeding is concluded unless made as a part of a request for reexamination under § 1.510.

The titles of §§ 1.510–1.570 are being amended by revising them to be limited to *ex parte* reexamination where applicable. No comment was received on these changes. They are adopted as proposed.

Section 1.510(a) is being amended to limit the section to *ex parte* reexamination proceedings. The notice of proposed rulemaking included a proposed amendment to § 1.510(b)(4) which relates to the contents of the reexamination request. This proposed amendment has, however, already been made in the final rule to implement the Patent Business Goals. See Changes to Implement the Patent Business Goals, Final Rule, 65 FR 54604 (September 8, 2000); 1238 Off. Gaz. Pat. Office 77 (September 19, 2000). Section 1.510(b)(4) was amended to delete the requirement of mounting the copy of the patent to be reexamined in single column format. Instead, a copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent will be required. All copies must have each page plainly written on only one side of a sheet of paper. Section 1.510(b)(4) is now being revised so that it applies to both *ex parte* reexamination and *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

Sections 1.515, 1.520, 1.525, 1.530, 1.535, and 1.540 are being amended to recite the reexamination as ''*ex parte*'' reexamination where appropriate, to eliminate any potential for confusion. No comment was received on these changes. They are adopted as proposed.

Section 1.530(d) is being revised so that it (and §§ 1.530(e)–(k)) apply to both *ex parte* reexamination and *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

A new § 1.530(l), directed to correction of inventorship of a patent, was added in the final rules to implement the Patent Business Goals. *See* Changes to Implement the Patent Business Goals, Final Rule, 65 FR 54604 (September 8, 2000); 1238 Off. Gaz. Pat. Office 77 (September 19, 2000). Section 1.530(l) is now being revised so that it applies to both *ex parte* reexamination and *inter partes* reexamination proceedings. Section 1.530(l) is also being revised to state ''on petition of all the parties set forth in § 1.324(b)(1)–(3)'' rather than ''on petition of all the parties'' to make it clear that all ''parties'' to the proceeding (*e.g.,* an *inter partes* reexamination third party requester) need not, and should not, join in the petition to correct inventorship.

Section 1.550, which provides for the conduct of the reexamination proceeding, is being amended to limit the section to *ex parte* reexamination proceedings filed under § 1.510. In addition, § 1.550(d) is being amended to clarify that the failure to file a written statement of an interview as required under § 1.560(b) shall be the basis for terminating a reexamination proceeding. Section 1.550(e)(1) specifically provides for the revival of terminated *ex parte* reexamination proceedings under the unavoidable delay provisions of § 1.137(a). The unavoidable delay provisions of 35 U.S.C. 133 are imported into and are applicable to *ex parte* reexamination proceedings by 35 U.S.C. 305. Section 1.550(e)(2) provides for the revival of terminated *ex parte* reexamination proceedings under the ''unintentional'' provisions of § 1.137(b). The unintentional delay fee provisions of 35 U.S.C. 41(a)(7) are imported into and are applicable to *ex parte* and *inter partes* reexamination proceedings by section 4605 of S. 1948. Note, however, that the unintentional delay provisions of 35 U.S.C. 41(a)(7) only become effective in reexamination proceedings on November 29, 2000 (one year after enactment of the statute). No comment was received on this section. It is adopted as proposed.

Section 1.552, which provides for the scope of reexamination in *ex parte* reexamination, is being amended to limit the section to *ex parte* reexamination proceedings filed under § 1.510. In addition, § 1.552(a) and (b) are being amended to more clearly

specify that all of the claims (new claims and amended patent claims) will be examined on the basis of patents or printed publications and, with respect to subject matter added or deleted in the reexamination proceeding, on the basis of the requirements of 35 U.S.C. 112. Sections 1.552 and 1.906 of the present rule package were drafted to parallel the text of § 1.906 as it was presented in the August 1995 Notice of Proposed Rulemaking entitled ''Rules of Practice in Patent Cases; Reexamination Proceedings.'' Section 1.552(c) is further being amended to preclude the examiner from independently discovering and noting issues other than those indicated in §§ 1.552(a) and (b). In this regard, § 1.552(c) is being amended by changing the phrase ''If such questions are discovered during a reexamination proceeding,'' to now read ''If such issues are raised by the patent owner or third party requester.'' The examiner should only note an issue under § 1.552(c) after careful consideration, and should only note the raised issue once. Patent owners could then file a reissue application if they wish such issue to be resolved. It would not be appropriate for the examiner *sua sponte* to raise issues directed to the patentability of a claim of a patent which may not be resolved in the reexamination. No comment was received on this section. It is adopted as proposed.

Section 1.555, which sets forth the patent owner's duty of disclosure in reexamination, is being amended to clearly apply to both *ex parte* and *inter partes* reexaminations. In addition, § 1.552(c) is being amended to preclude the examiner from independently discovering and noting issues relating to patent owner's compliance with its duty of disclosure. In this regard, § 1.552(c) is being amended by changing the phrase ''If questions of compliance with this section are discovered during a reexamination proceeding, * * *'' to now read ''If questions of compliance with this section are raised by the patent owner or third party requester during a reexamination proceeding, * * * .'' It would not be appropriate for the examiner *sua sponte* to raise issues directed to the issue of patent owner's compliance with its duty of disclosure which may not be resolved in the reexamination. No comment was received on this section. It is adopted as proposed.

Section 1.560, which provides for interviews in reexamination proceedings, is being amended to limit the section to *ex parte* reexamination proceedings filed under § 1.510. Note, however, that there will be no interviews which address the issues of the proceeding permitted in *inter partes* reexamination proceedings under § 1.913. See § 1.955. In addition, § 1.560(b) is being amended to clarify that the patent owner must file a written statement of an interview after an interview is held. The written statement may be filed either as a separate paper within one month after the date of the interview, or as a separate part of a response to an outstanding Office action, whichever is later. One comment was received and directed to this section.

Comment: The comment suggests that when reexamination is requested by a third party, there is usually litigation directed to the patent for which reexamination is requested involving severely conflicting interests between the patent owner and the third party requester. The comment asserts that during reexamination, the examiner is required to maintain neutrality, and therefore the scope of the interview should be limited to that needed to deepen the examiner's understanding of the technology and to clarify points of contention and that the examiner should be prohibited from discussing amendment proposals during an interview with the patent owner.

Response to Comment: The statute, 35 U.S.C. 305, provides that reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In a very real sense, the intent of reexamination is to start over and reexamine the patent and examine new and amended claims as they would have been examined in the original application of the patent. Section 132 permits the patent owner to propose amendments to the claims which will be reexamined by the examiner. The procedures established for initial examination under section 132 permit the patent owner to propose amendments either by written response or during an interview with the examiner. See section 713.01 of the Manual of Patent Examining Procedure which provides guidance as to the submission of amendments in conjunction with interviews, and the rationale therefor. In both cases, the examiner is obligated to consider such amendment proposals when conducting his or her examination of the claims in light of the prior art. The comment is not adopted, and the section is adopted as proposed.

Section 1.565, which provides for concurrent Office proceedings, is being amended to limit the reexamination proceedings of the section to *ex parte* reexamination proceedings filed under § 1.510. In addition, § 1.565(e) is being amended to change ''examiner-in-chief'' to ''administrative patent judge'' to reflect the current title. Also, the appropriate references for concurrent proceedings which include an *inter partes* reexamination proceeding have been added. Section 1.565(c) is being amended to make it clear that after prosecution has been terminated in a pending reexamination proceeding (e.g., by the issuance of a Notice of Intent to Issue a Reexamination Certificate) there is no right of merger of any subsequently filed reexamination request. No comment was received on this section. It is adopted as proposed.

Section 1.570 is being amended to recite the reexamination as ''*ex parte*'' reexamination where appropriate, to eliminate any potential for confusion. No comment was received on this section. It is adopted as proposed.

A new title Subpart H—Inter Partes Reexamination of Patents (Applicable to any Patent that Issues from an Original Application Filed in the United States on or after November 29, 1999) has been added which provides that the reexamination rules in this subpart generally apply to *inter partes* reexamination proceedings on patents having a filing date on or after November 29, 1999. Some of the *inter partes* reexamination rules specifically incorporate *ex parte* reexamination rules, e.g., § 1.943 (requirement of responses, comments and briefs) incorporates § 1.52, and § 1.933 (patent owner duty of disclosure) incorporates § 1.555. One comment was received directed to this section.

Comment: The comment suggested that the heading ''Subpart H Reexamination of Patents'' as proposed in the Notice of Proposed Rulemaking be amended to add ''(Applicable to Patents having an Original United States Filing date On or After November 29, 1999).'' The comment notes that the effective date of the statute with respect to optional *inter partes* reexamination is complex, and it would be helpful to practitioners and those considering *inter partes* reexamination if they are clearly advised of what patents are subject to such proceedings.

Response to Comment: The comment is adopted in part. The heading has been amended to add ''(Applicable to any Patent that Issues from an Original Application Filed in the United States on or after November 29, 1999.)'' This language more closely tracks the language of the statute than does the language suggested in the comment.

New § 1.902 provides for the processing of prior art citations during

an *inter partes* reexamination proceeding and is analogous to new § 1.502 which deals with prior art citations during an *ex parte* reexamination proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.903 provides that the patent owner and the third party requester shall be sent copies of all Office actions, and that the patent owner and the third party requester must serve copies of all papers on all other parties in the *inter partes* reexamination proceeding or they may be refused consideration by the Office. This is analogous to the provisions of § 1.550(e). No comment was received on this section. It is adopted as proposed.

New § 1.904 provides that a notice of the filing of an *inter partes* reexamination request will be published in the *Official Gazette* under § 1.11(c) and that such a notice will be considered to be constructive notice to the patent owner. No comment was received on this section. It is adopted as proposed.

New § 1.905 provides that, unless otherwise provided for, a submission of papers by the public other than third party requesters in an *inter partes* reexamination proceeding will not be considered in the proceeding and will be treated in accordance with the requirements of a prior art submission under § 1.902 if it complies with the requirements of § 1.501. Submissions not in accordance with § 1.501 will be returned to the sender. No comment was received on this section. It is adopted as proposed.

New § 1.906 covers the scope of reexamination in an *inter partes* reexamination proceeding. While it is not intended that examiners will routinely complete a new search when conducting an *inter partes* reexamination, examiners may conduct additional searches and cite and apply additional prior patents and printed publications when they consider it appropriate and beneficial to do so. Section 1.906(a) provides that the examination is only on the basis of patents or printed publications and, with respect to subject matter added or deleted during the *inter partes* reexamination, on the basis of the requirements of 35 U.S.C. 112. Section 1.906(b) provides that claims in a reexamination proceeding must not enlarge the scope of the claims of the patent and must not introduce new matter. Section 1.906(c) provides that issues relating to matters other than those indicated in §§ 1.906(a) and (b) of this section (*e.g.,* on sale, public use, duty of disclosure, etc.) will not be resolved in a reexamination proceeding, but will be noted by the examiner as being an open issue in the record if such issues are raised by the patent owner or the third party requester. The examiner should only note an issue under § 1.906(c) after careful consideration, and should only raise the noted issue once. Patent owners could then file a reissue application if they wish such issue to be resolved. It would not be appropriate for the examiner *sua sponte* to raise issues directed to the patentability of a claim of a patent which may not be resolved in the reexamination. No comment was received on this section. It is adopted as proposed.

New § 1.907 sets forth prohibitions on the filing of an *inter partes* reexamination request. The basis for this section is 35 U.S.C. 317. Under § 1.907(a), once an order for an *inter partes* reexamination has been issued, neither the third party requester, nor any of its privies, may file a subsequent request for an *inter partes* reexamination of the patent until an *inter partes* reexamination certificate is issued, unless such filing is authorized by the Commissioner. Under § 1.907(b), once a final decision has been entered against a party in a civil action that the party has not sustained its burden of proving invalidity of any patent claim in suit, then that party, and its privies, are thereafter precluded from requesting an *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such civil action; and an *inter partes* reexamination requested by that party, or its privies, on the basis of such issues may not thereafter be maintained by the Office. Under § 1.907(c), if a final decision in an *inter partes* reexamination proceeding instituted by a third party requester is favorable to patentability of any patent claim, then that party, or its privies, may not thereafter request an *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such *inter partes* reexamination proceeding. Two comments were received directed to this section.

Comments: The first comment, directed to § 1.907(b), suggests that if the Office intends to determine on a case-by-case basis whether the third party requester could have raised an issue in a civil action, the phrase ''or could have raised'' should be deleted from § 1.907(b). The second comment directed to §§ 1.907(b) and (c) suggests that the words ''could have raised'' should be changed to ''had become or should have become known to that party upon reasonable inquiry at the time the *inter partes* reexamination was ordered.'' The comment argues the ''could have raised'' language would theoretically bar a third party from requesting a new reexamination based on any existing patent or printed publication, even those remotely located in another file of the third party.

Response to Comments: As to the first comment, under § 1.915(b)(7), a third party requester is required to include a certification that the estoppel provisions of § 1.907 do not prohibit the filing of the *inter partes* reexamination request. The Office does not intend to look beyond that certification. The Office does not plan to make a case-by-case determination. It is only in the rare instance where a challenge to the accuracy of the certification is raised by the patent owner, that the question would then need to be addressed.

As to the second comment addressing §§ 1.907(b) and (c), the statute, 35 U.S.C. 317, recites ''on the basis of issues which that party or its privies raised or could have raised in such civil action or *inter partes* reexamination proceeding.'' The rule merely tracks the statutory language. Adoption of the suggested language would appear to enlarge the scope of the statutory estoppel. The interpretation of the statutory language is subject to statutory construction on a case-by-case basis depending on the particular facts of the individual case. As noted above, the Office does not intend to make such a determination in each reexamination, but will rely upon the certification by the third party requester under § 1.915(b)(7). The comments are not adopted, and the section is adopted as proposed.

New § 1.913 provides for any person (unless the estoppel provisions of § 1.907 apply) to file a request under 35 U.S.C. 311 for an *inter partes* reexamination of a patent which issued from an original application filed on or after November 29, 1999. The time period for filing such a request is limited to the period of enforceability of the patent for which the request is filed. The language ''other than the patent owner or its privy'' has been deleted from § 1.913. One comment was received addressed to this section.

Comment: Section 1.913, as proposed in the Notice of Proposed Rulemaking, excluded the patent owner or its privies from those persons who may file an *inter partes* request for reexamination. The comment suggests the Office has exceeded its authority in excluding the patent owner or its privies. The comment argues that Congress intended that the patent owner could be

permitted to file an *inter partes* reexamination because 35 U.S.C. 311(c), which requires the Commissioner to send a copy of the request to the patent owner, explicitly relieves the Commissioner of that obligation when the *inter partes* requester is the patent owner. The comment notes that a patent owner may feel the chances of staying a pending litigation are increased by requesting an *inter partes* reexamination, as compared to an *ex parte* reexamination, because of the provisions of 35 U.S.C. 318 (stay of litigation).

Response to Comment: The Office does not agree with the statutory interpretation presented in the comment. Portions of the language contained in sections 311, 312, 314, and 317 of the 1999 statute which suggests that the patent owner may file an *inter partes* request for reexamination are regarded as inadvertent legislative drafting errors created through the evolution of the final version of the 1999 statute. The language of the 1980 *ex parte* reexamination statute, which was used as the basis for the 1999 statute, includes language which permits either the patent owner or a third party to file a request for *ex parte* reexamination. The earlier versions of the 1999 statute merely proposed to amend the 1980 statute by making the *ex parte* reexamination more *inter partes* in nature. The final version of the 1999 statute was re-drafted at the last moment and for the first time created separate *ex parte* (chapter 30) and *inter partes* (chapter 31) reexamination statutes by modeling the *inter partes* practice on the *ex parte* practice. The drafters, however, inadvertently did not remove the language of the 1980 statute directed to patent owner filings of reexamination requests, even though an *inter partes* procedure is clearly inappropriate for a reexamination initiated by a patent owner. Note further that legislation is pending before Congress in which the noted language has been deleted or changed. *See* the Intellectual Property Technical Amendments Act of 2000, H.R. 4870, 106th Cong. (2000), which clearly limits the parties who may file an *inter partes* request for reexamination to be third parties other than the patent owner. Accordingly, the Office does not agree with the comment that the statute permits a patent owner to file an *inter partes* reexamination request.

In the interest of being consistent with the statute, the phrase ''other than the patent owner or its privies'' has been deleted from the section. The change is being made solely for the purpose of more closely following the language of the statute.

New § 1.915(a) requires payment of the fee for requesting an *inter partes* reexamination which is set forth in § 1.20(c)(2). Section 1.915(b) indicates what each request for *inter partes* reexamination must include. The requirements are analogous to the requirements of § 1.510(b) for filing an *ex parte* reexamination request with the most notable difference being that the third party requester must be identified in an *inter partes* reexamination request. Section 1.915(c) indicates that requests for an *inter partes* reexamination may be filed by attorneys or agents on behalf of a third party requester, but it is noted that the real party in interest must be identified. Section 1.915(d) provides that if the request for *inter partes* reexamination does not meet all the requirements of § 1.915(b), the third party requester may be given an opportunity to complete the *inter partes* reexamination request to avoid having the proceeding vacated. One comment was received directed to this section.

Comment: The comment noted that § 1.915(b)(8) requires any person requesting *inter partes* reexamination to specify the ''real party in interest'' in a statement. The comment asks whether this language coupled with the requirement of § 1.915(c) prohibits an attorney filing the request from being the real party in interest.

Response to Comment: Section 1.915(c) requires an attorney or agent who files a request for *inter partes* reexamination on behalf of another party to have a power of attorney or to be acting in a representative capacity under § 1.34(a). Section 1.915(c) does not preclude an attorney from filing a request for *inter partes* reexamination on behalf of himself or herself as the real party in interest. The section is adopted as proposed.

New § 1.919 indicates that the date on which the entire fee for a request for *inter partes* reexamination is received will be considered to be the filing date of the request for *inter partes* reexamination. No comment was received on this section. It is adopted as proposed.

New § 1.923 provides for a determination by the examiner as to whether the request has presented a substantial new question of patentability under 35 U.S.C. 312 and requires that the determination be made within three months of the filing date of the request. One comment was received directed to this section.

Comment: The comment notes that section 4607 of S. 1948 provides that a third party who requests *inter partes* reexamination is estopped from challenging at a later time, in any civil action, any fact determined ''during the process of'' such reexamination. Section 1.923 provides that if the examiner determines no substantial new question of patentability is present, the examiner will deny the request and not order reexamination. The comment argues that facts determined in the decision ordering or denying reexamination are not facts determined ''during the process of'' such reexamination because a decision denying reexamination is not a decision made after full submission of all of the evidence and arguments. The comment suggests that the following sentence should be added at the end of the section in order to clearly point this out: ''Such determination does not constitute a finding of fact under the estoppel provisions of Section 4607.''

Response to Comment: Whether or not facts determined in deciding to deny or order reexamination are facts ''determined during the process of such reexamination'' is a question to be answered by the Federal courts. By statute, the estoppel arises in a civil action, not in an Office proceeding. The comment is not adopted, and the section is adopted as proposed.

New § 1.925 provides for a refund under § 1.26(c) of a portion of the filing fee if *inter partes* reexamination is not ordered. See the discussion of § 1.26(c) above as to the amount of the refund. No comment was received on this section. It is adopted as proposed.

New § 1.927 provides for review by petition to the Commissioner of a decision denying *inter partes* reexamination. No comment was received on this section. It is adopted as proposed.

New § 1.931 provides for ordering *inter partes* reexamination where a substantial new question of patentability has been found pursuant to § 1.923. Section 1.931(b) places a limitation on the selection of the examiner by the Office in that the same examiner whose decision denying *inter partes* reexamination was reversed on petition filed under § 1.927 ordinarily will not conduct the *inter partes* reexamination ordered in the decision granting the petition. No comment was received on this section. It is adopted as proposed.

New § 1.933 covers the duty of disclosure by a patent owner in an *inter partes* reexamination proceeding. The rule provides that the patent owner's duty in an *inter partes* reexamination proceeding is the same as the duty in an *ex parte* reexamination proceeding set forth in § 1.555(a) and (b), and is satisfied by filing a paper in compliance

with § 1.555(a) and (b). In addition, § 1.933(b) is being amended to preclude the examiner from independently raising and noting issues relating to patent owner's compliance with its duty of disclosure. In this regard, § 1.933(b) is being amended by changing the phrase ''If questions of compliance with this section are discovered during a reexamination proceeding, * * *'' to now read ''If questions of compliance with this section are raised by the patent owner or third party requester during a reexamination proceeding, * * *'' It would not be appropriate for the examiner *sua sponte* to raise issues directed to the issue of patent owner's compliance with its duty of disclosure which may not be resolved in the reexamination. No comment was received on this section. It is adopted as amended.

New § 1.935 provides that the initial Office action on the merits will usually accompany the *inter partes* reexamination order. When reexamination is ordered, the initial paper from the examiner will normally comprise two parts. The first part will address the issue as to whether the cited art raises a substantial new question of patentability (SNQ). If the examiner determines that the prior art does raise an SNQ, reexamination will be ordered. In this situation, a second part of the initial Office action would usually be issued, which would address the patentability issues and will constitute the first Office action on the merits. If the examiner determines that the cited art does not raise an SNQ, reexamination is denied. No patentability question would be addressed by the examiner. One comment was received directed to this section. (This comment was also addressed to § 1.945 relating to patent owner's response to Office actions. The discussion below relates to both §§ 1.935 and 1.945.)

Comment: The comment notes that if the examiner refuses to adopt a ground of rejection proposed by the third party, the patent owner is not required to address this issue prior to the appeal stage. Consequently, if the refusal to adopt the ground of rejection is reversed on appeal to the Board of Patent Appeals and Interferences (Board), at that time the patent owner is given an opportunity to amend the claim. The comment suggests that, prior to the appeal stage, the patent owner should be required to respond to all of the issues raised by the requester. The comment points out that if this suggestion is implemented, the opportunity for amendment after the Board decision and the need for remand would then become unnecessary, even if the Board adopts any ground proposed by the third party requester.

Response to Comment: The patent owner has no legal compulsion to amend a claim based solely on a ground of rejection raised by the third party requester. Only after the ground of rejection is adopted by the examiner or the Board of Patent Appeals and Interferences must the patent owner consider amending the claim. The comment is not adopted, and § 1.935 is adopted as proposed. (See discussion of § 1.945.) New § 1.937 covers the basic items relating to the conduct of *inter partes* reexamination proceedings. Section 1.937(a) provides that, in accordance with 35 U.S.C. 314(c), unless otherwise provided by the Commissioner for good cause, all *inter partes* reexamination proceedings will be conducted with special dispatch. Section 1.937(b) provides that all *inter partes* reexamination proceedings will be conducted according to the procedures established for initial examination under §§ 1.104–1.116. These proceedings will generally follow the procedures for examining patent applications. Section 1.937(c) provides that all communications between the Office and the parties to the *inter partes* reexamination which are directed to the merits of the proceeding must be in writing and filed with the Office for entry into the record of the proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.939 provides for the return of unauthorized papers filed in an *inter partes* reexamination, and provides that, unless otherwise authorized, no paper shall be filed, by any party, in an *inter partes* reexamination before the initial Office action on the merits. No comment was received on this section. It is adopted as proposed.

New § 1.941 provides that amendments made by the patent owner in an *inter partes* reexamination must be made in accordance with the requirements of §§ 1.530(d)–(k) and 1.943. No comment was received on this section. It is adopted as proposed.

New § 1.943(a) provides that the form of responses, briefs, appendices, and other papers must be in accordance with § 1.52. Section 1.943(b) establishes page limits for responses by the patent owner and written comments by the third party requester (other than briefs). Amendments, appendices of claims, and reference materials such as prior art references would not be included in the page count. Section 1.943(c) provides for page limits and total word limits for briefs. No comment was received on this section. It is adopted as proposed.

New § 1.945 provides that a patent owner will be given at least 30 days to respond to any Office action on the merits. While the Office ordinarily intends to set a two-month period for the patent owner to respond to an Office action on the merits, the minimum period set will always be at least 30 days. One comment was received directed to this section. This comment was also addressed to § 1.935 relating to the patent owner's response to the initial Office action. The comment is not adopted, and § 1.945 is adopted as proposed.

New § 1.947 provides that each time a patent owner files a response to any Office action on the merits, the third party requester may once file written comments if those comments are received in the Office within a period of 30 days from the date of service of the patent owner's response. Since 35 U.S.C. 314(b)(3) statutorily imposes this period for third party requester comments, this time period cannot be extended. Thus, any third party comments received in the Office after expiration of 30 days from the date of service of the patent owner's response shall be considered to be untimely and unauthorized, and thus will be returned to the third party in accordance with § 1.939. Three comments were received directed to this section.

Comments: The first and second comments suggest that it will be difficult for a foreign third party requester to timely comment within a period of 30 days from the date of service of the patent owner's response. The first comment suggests that a third party comment period of 60 days should be set. The second comment suggests that some way should be devised for receiving a substantial extension to the 30-day period.

The third comment suggests that it is unfair for the patent owner to not be able to respond to the third party comments and thereby have the last word. The comment suggests that the patent owner should have the right of last comment.

Response to Comments: As to the first comment, the statute (35 U.S.C. 314(b)(3)) specifically requires that the third party requester comments be received by the Office within 30 days after the date of service of the patent owner's response to an Office action. The rules cannot provide a period for comments that would give the third party more time to comment than that explicitly stated in the statute.

As to the second comment, because the statute specifically requires that third party requester comments be received by the Office within 30 days

after the date of service of a patent owner's response to the Office action, the rules cannot extend the period for comments in order to give the third party more time in which to file the written comments. The Office recognizes the shortness of this time period. While no relief can be granted by enlarging or extending the statutory 30-day period, a measure of relief has been granted to the third party requester in that the rule is being amended to provide that the date of Office ''receipt'' of third party requester comments will be construed to be the date of mailing if the provisions of § 1.8 are complied with when submitting the written comments.

As to the third comment, providing the patent owner with an opportunity to reply to third party comments would unduly prolong the pendency of the proceeding, contrary to the ''special dispatch'' required by 35 U.S.C. 314(c). It should also be noted that an owner response to the third party comments could be considered a (supplemental) patent owner response to the Office action which would trigger a further right to third party comment under 35 U.S.C. 316(b)(3) and thus create an endless cycle. The comments are not adopted. The rule is adopted as proposed, but amended as indicated above.

New § 1.948 provides that third party requester prior art submissions as defined under § 1.501 may be filed after the *inter partes* reexamination order only if they are submitted as part of a comments submission under §§ 1.947 or 1.951(b), and are limited to: (1) Prior art necessary to rebut a finding of fact made by the examiner; (2) prior art necessary to rebut a position taken by the patent owner in a response; or (3) prior art which for the first time became known or available to the third party requester after the filing of the *inter partes* request for reexamination where a discussion of the pertinency of each reference to the patentability of at least one claim is included. Limiting later filed prior art submissions to newly discovered or newly available prior art (except when used for rebuttal purposes) will encourage the third party requester to submit all known pertinent prior art along with the initial request for *inter partes* reexamination. Later submission of previously known or available prior art would only be permissible to rebut a position taken by the examiner or the patent owner, or through the filing of an *ex parte* reexamination request which, if ordered, would be merged with the *inter partes* reexamination proceeding.

Permitting the third party requester to timely submit newly discovered or previously unavailable prior art during the *inter partes* reexamination proceeding will obviate the need for the third party requester to file an *ex parte* request for reexamination. To prevent harassment of the patent owner due to frequent submissions of prior art citations during a reexamination proceeding, such submissions may only be filed together with written comments by the third party requester in response to a patent owner response to an Office action on the merits, or after an action closing prosecution. No comment was received on this section. The conjunction ''and'' has been replaced by ''or'' in the recitation ''§§ 1.947, 1.951(a), or 1.951(d)'' for grammatical clarity. The reference to § 1.951(a) has been deleted and § 1.951(d) has been changed to § 1.951(b) to reflect the changes made to § 1.951 pursuant to the comments. The section is adopted as amended.

New § 1.949 provides for the close of prosecution on the second or subsequent Office action which precedes a final action, a final rejection and/or a final decision favorable to patentability. The distinction between a final action and an action closing prosecution is important, since appeal rights to the Board of Patent Appeals and Interferences under 35 U.S.C. 134 (b) and (c) mature only with a final action. One comment was received directed to this section.

Comment: The comment suggests that the examiner should be precluded from closing prosecution whenever a new ground of rejection is made, irrespective of whether a prior amendment made the new ground necessary. The comment argues that a reexamination is different from an application where the applicant is permitted to refile the application and introduce new claims, evidence and argument, because the patent owner in a reexamination cannot abandon the reexamination and file a continuing proceeding.

Response to Comment: The third party request for reexamination sets forth the grounds of rejections raised by the third party requester. The initial Office action on the merits addresses the grounds and arguments raised in the request, and sets forth the examiner's grounds of rejection including those raised by the third party requester and those raised by the examiner. The Office action also includes the examiner's reasons for not adopting other grounds of rejection proposed by the third party requester. Patent owner may consider and respond to the initial Office action, and provide amended claims ranging from the broadest claim patent owner considers to be patentable over the prior art to the narrowest claim patent owner is willing to accept. Thus, prior to the close of prosecution, the issues are well developed, patent owner is aware of the issues and positions of the third party requester and the examiner, and patent owner has the right to present evidence and argument in light of the third party arguments and the examiner's rejections and to present amended claims. While patent owner may not refile a reexamination after the close of prosecution and ''start over'' as can be done in a regular application after a final rejection, the reexamination rules do not leave the patent owner without any relief at this stage of the proceeding. In this regard, after the close of prosecution the patent owner may file comments and/or amendments under § 1.951 which will be governed by the standards of § 1.116. Under § 1.116(c), amendments may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented. This strikes a balance between timely presenting amendments and providing relief when warranted. It also provides for an orderly and timely proceeding under the special dispatch requirement of the statute. In addition, the statute does not preclude the patent owner from filing an *ex parte* request for reexamination with amended claims and/or new evidence. Once ordered, the reexamination proceedings would be merged, and the newly submitted material would be addressed in the merged proceeding. The comment is not adopted, and the section is adopted as proposed.

New § 1.951 sets forth the options available to the parties after an Office action closing prosecution. Under § 1.951(a), the patent owner may once file comments limited to issues raised in the action closing prosecution, which comments may also include proposed amendments (subject to the criteria of § 1.116 as to whether or not the amendments shall be admitted). Under § 1.951(b), when the patent owner does file comments, the third party requester may once file comments in response to the patent owner's comments. One comment was received directed to this section.

Comment: Section 1.951 as proposed in the Notice of Proposed Rulemaking included subsections (a)–(d). Proposed subsection (a) permitted the third party requester to once file comments limited to issues raised in the action closing prosecution. Proposed subsection (b) permitted the patent owner to once file comments in response to the third party requester's comments. Simultaneously to the filing of these submissions, proposed subsection (c) permitted the

patent owner to once file comments limited to issues raised in the action closing prosecution, and proposed subsection (d) permitted the third party requester to once file comments in response to the patent owner's comments. The comment suggests that the comments filed by the third party requester under proposed § 1.951(a) after the close of prosecution do not comply with the statute because they are not filed in reply to a patent owner's response to an Office action on the merits. The comment asserts that such ''direct'' requester comments are not consistent with the statute as the statute makes it clear that the third party requester's right to comment only matures with the filing of a patent owner response to an Office action on the merits, and nowhere in the statute does it permit third party requester comments without there first being a patent owner response.

Response to Comment: The comment has been adopted. Proposed subsection (a) which permitted the third party requester to once file comments limited to issues raised in the action closing prosecution, and proposed subsection (b) which permitted the patent owner to once file comments in response to the third party requester comments have been deleted. Proposed subsections (c) and (d) have been re-named (a) and (b), respectively. The purpose of proposed subsections (a) and (b) was to provide the third party requester an opportunity to better focus the issues prior to filing an appeal. Such issues may now be addressed by the requester after appeal in the appellant brief which, if persuasive, will result in the examiner adopting requester's arguments and reopening prosecution, if appropriate. While waiting until after appeal to permit ''direct'' third party requester arguments may result in protracting the proceeding, such direct third party input is consistent with the statute which permits the third party requester to appeal any final decision favorable to patentability, and be a party to any appeal taken by the patent owner to the Board of Patent Appeals and Interferences. 35 U.S.C. 315(a) and (b). The comment is adopted as amended.

New § 1.953 provides for issuance of a right of appeal notice. Section 1.953(a) provides that, following the responses or expiration of the time for response in § 1.951, the examiner may issue a right of appeal notice which shall include a final rejection and/or final decision favorable to patentability in accordance with 35 U.S.C. 134. The intent of limiting the appeal rights until after the examiner issues a right of appeal notice is to specifically preclude the possibility of one party attempting to appeal prematurely while prosecution before the examiner is being continued by the other party. Section 1.953(b) provides that any time after the initial Office action on the merits in an *inter partes* reexamination, the patent owner and all third party requesters may stipulate that the issues are appropriate for a final action, which would include a final rejection and/or a final decision favorable to patentability, and may request the issuance of a right of appeal notice. If the examiner determines that no other issues are present or should be raised, a right of appeal notice limited to the identified issues shall be issued. The request for an expedited notice will enable the parties to accelerate the *inter partes* reexamination proceeding. Section 1.953(c) provides that the right of appeal notice shall be a final action, which would include a final rejection and/or a final decision favorable to patentability, and prohibits amendments under § 1.116 in response to the right of appeal notice. The right of appeal notice shall set a one-month time period for either party to appeal. If no appeal is filed, the reexamination proceeding will be terminated, and the Commissioner will proceed to issue a certificate under § 1.997 in accordance with the right of appeal notice. No comment was received on this section. It is adopted as proposed.

New § 1.955 provides that interviews which discuss the merits of the proceeding will not be permitted in *inter partes* reexamination proceedings. Thus, in an *inter partes* reexamination proceeding, no separate *ex parte* interviews will be permitted, and no *inter partes* interviews will be permitted; nor will an informal amendment be accepted as that would be tantamount to an *ex parte* interview. All communications between the Office and the patent owner which are directed to the merits of the proceeding must be in writing and filed with the Office for entry into the record of the proceeding. The Office has reconsidered its initial position, taken in the August 11, 1995, Notice of Proposed Rulemaking, to permit owner-initiated interviews in which the patent owner and the third party requester would participate. Accordingly, neither the patent owner nor the third party requester in an *inter partes* reexamination is permitted to initiate, or participate in, an *ex parte* interview or an *inter partes* interview which discusses the merits of the proceeding. Four comments were received directed to this section.

Comments: The first comment asserts that because the *inter partes* reexamination may result in the cancellation of patent claims or the estoppel of one or more third party defenses in a civil action, the examiner should have access to all matters that may be necessary to reach a decision, including the testimony of experts, particularly in the face of cross-examination. Further, the comment suggests that the patent owner is forced into an *inter partes* reexamination and should not be deprived of patent rights without due process of law. The comment suggests that interviews should be provided during which each party should be permitted to present its case orally to the examiner, to present its experts and to question the other party and the other party's experts in front of the examiner, and that the examiner, in turn, should have the opportunity to question both parties and their experts.

The second comment recognizes the concerns of the Office but concludes that since the rule could be waived in appropriate circumstances, the rule does not amount to an absolute prohibition. The comment suggests interviews be permitted, particularly if they could be handled through the assistance of a special group of legal advisors trained in conducting *inter partes* hearings. The comment further suggests a rule be imposed that any oral or electronic contact with Office officials responsible for an *inter partes* proceeding be handled through a conference call with all relevant parties represented.

The third comment suggests that it is unnecessary to ban interviews across the board because an interview can be useful to help the examiner understand the points of contention, particularly so when the art is complex. If the presence of a third party requester would complicate the interview, the examiner could simply interview the parties separately. The comment suggests that since there are usually severely conflicting interests between the patent owner and the third party requester, the interview should be limited to deepening the examiner's understanding of the technology and to clarifying points of contention; the examiner should be prohibited from discussing amendment proposals.

The fourth comment suggests that while the prohibition against interviews would seem to be quite beneficial to the third party requester, a countervailing problem for the examiner and the patent owner will be an inability of the examiner to resolve complex technological issues by direct questions and answers (in an interview). The comment suggests that guidelines to the examiner on how to address such issues in the form of written questions should

be provided in the Manual of Patent Examining Procedure (MPEP).

Response to Comments: The comments suggest various formats for providing an interview including: a formal hearing format, interview oversight by trained legal advisors, conference calls, separate interviews for both parties, and limitations on the examiner from discussing amendments during an interview. While the suggested formats would tend to ease the problems associated with *inter partes* interviews, the remaining problems would still outweigh the benefits of an interview on the merits. No matter what the structure of the interview, the presence of a third party requester (or a separate interview with the requester) will complicate the reexamination proceeding and significantly delay it. Past history has shown *inter partes* interviews to be both resource intensive and unwieldy. *Inter partes* interviews are difficult to arrange, conduct, and control. Inevitable interaction between the patent owner's representative and its experts, the third party's representative and its experts, the examiner, and the ''senior level official'' would be difficult to regulate and control. Recording the substance of the interview would be difficult, and providing cross-transcripts would result in delay and complications. In addition, the time to arrange and conduct the interview would greatly extend the *inter partes* proceeding time line, which would be clearly contrary to the ''special dispatch'' required by 35 U.S.C. 314(c) for the *inter partes* reexamination proceeding. The suggestion as to providing guidelines on instructing the examiner on how to draft written questions is a matter to be addressed in a future MPEP revision. The comments are not adopted, and the section is adopted as proposed.

New § 1.956 relates to patent owner extensions of time for responding to a requirement of the Office in *inter partes* reexamination proceedings. As in *ex parte* reexamination practice, a patent owner may only obtain an extension of time for sufficient cause, and the request for such extension must be filed on or before the end of the period for response. Note that the time for the third party requester to file comments to patent owner responses may not be extended, as set forth in § 1.947. No comment was received on this section. It is adopted as proposed.

New § 1.957(a) provides that a third party requester's submission in *inter partes* reexamination may be refused consideration if it is untimely or is inappropriate. Sections 1.957(b) and (c) relate to the patent owner's failure to timely or appropriately respond in *inter partes* reexamination proceedings. In this event, if no claims are found patentable, the proceeding shall be terminated and a reexamination certificate shall be issued. If claims are found patentable, further prosecution shall be limited to the patentable claims, and any additional claims that do not expand the scope of the patentable claims. New § 1.957(d) provides that when the action by the patent owner is a bona fide attempt to respond and to advance the case, and is substantially a complete response to the Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, an opportunity to explain and supply the omission may be given. No comment was received on this section. It is adopted as proposed.

New § 1.958(a) provides for the revival of terminated *inter partes* reexamination proceedings under the unavoidable delay provisions of § 1.137(a). The unavoidable delay provisions of 35 U.S.C. 133 are imported into and are applicable to *inter partes* reexamination proceedings under 35 U.S.C. 314. New § 1.958(b) provides for the revival of terminated *inter partes* reexamination proceedings under the unintentional provisions of § 1.137(b). The unintentional delay fee provisions of 35 U.S.C. 41(a)(7) are imported into and are applicable to *inter partes* reexamination proceedings under section 4605 of S. 1948. Note, however, the unintentional delay fee provisions of 35 U.S.C. 41(a)(7) only become effective in reexamination proceedings on November 29, 2000 (one year after enactment of statute). No comment was received on this section. It is adopted as proposed.

New § 1.959 relates to appeals and cross appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. Both patent owners and third party requesters are given appeal rights in accordance with 35 U.S.C. 315. No comment was received on this section. It is adopted as proposed.

New § 1.961 relates to time of transfer of the jurisdiction of the appeal over to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.962 relates to the definition of appellant and respondent in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.963 relates to the time periods for filing briefs in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.965 relates to the requirements of the appellant brief in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.967 relates to the requirements of the respondent brief in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.969 relates to the examiner's answer. An examiner's answer may not include a new ground of rejection nor a new decision favorable to patentability. In either case (if there is to be a new ground of rejection or a new decision favorable to patentability), prosecution should be reopened. One comment was received directed to this section.

Comment: The comment questioned whether the examiner's answer should be optional especially when the appeal is by the patent owner.

Response to Comment: Although § 1.969(a) indicates that an examiner's answer ''may'' be furnished, common practice as set out in the procedure of the Manual of Patent Examining Procedure, is to furnish an examiner's answer. When an appeal goes forward, an examiner's answer will be mandatory. If the examiner, however, changes his or her position to issue a new ground of rejection or (when the third party participates in the appeal) to make a new finding of patentability, an examiner's answer would not be issued and prosecution would be reopened. The word ''may'' is used to cover those situations where prosecution is reopened and an examiner's answer is not issued. The word ''may'' does not authorize an examiner to send a proceeding to the Board of Patent Appeals and Interferences without issuing an examiner's answer. Section 1.969(c) is being modified by deleting ''Where a third party requester is a party to the appeal'' and a new § 1.969(d) is being added which provides clarification that any new ground of rejection or new determination not to make a proposed rejection must be made in an action reopening prosecution in accordance with the discussion of proposed § 1.969 in the notice of proposed rulemaking. The comment is not adopted and the section is adopted as modified in new § 1.969(d).

New § 1.971 gives any appellant one opportunity to file a rebuttal brief following the examiner's answer. The rebuttal brief filed by an appellant who is the patent owner is limited to the issues raised in the examiner's answer

and/or in any respondent brief. The rebuttal brief filed by an appellant who is a third party requester is limited to the issues raised in the examiner's answer and/or in the patent owner's respondent brief. The rebuttal brief of a third party requester may not be directed to the respondent brief of any other third party requester. No new ground of rejection can be proposed by a third party requester appellant. One comment was received directed to this section.

Comment: The comment, notes that the time for filing the rebuttal brief is within one month of the examiner's answer and suggests that since the examiner's answer is not required by the rules, tying one deadline date to another date for an event that may never occur may create a problem.

Response to Comment: Although § 1.969(a) indicates that an examiner's answer ''may'' be furnished, common practice as set out in the procedure of the Manual of Patent Examining Procedure, is to furnish an examiner's answer. When an appeal goes forward, an examiner's answer will be mandatory. See the discussion set forth in response to the comment on § 1.969 above. The comment is not adopted and the section is adopted as proposed.

New § 1.973 relates to the oral hearing in *inter partes* reexamination proceedings. One comment was received directed to this section.

Comment: The comment points out that the request for oral hearing may be filed ''within one month of the examiner's answer,'' and that the rules provide that the examiner ''may'' issue an examiner's answer under 1.969(a). The comment questions what happens if the examiner does not issue an examiner's answer? The comment suggests the rule should be modified to provide that a request for oral hearing be due ''within two months after the date of the examiner's answer or the period within which the examiner's answer must be furnished.''

Response to Comment: Although § 1.969(a) indicates that an examiner's answer ''may'' be furnished, common practice as set out in the procedure of the Manual of Patent Examining Procedure, is to furnish an examiner's answer. When an appeal goes forward, an examiner's answer will be mandatory. See the discussion set forth in response to the comment on § 1.969 above. The comment is not adopted and the section is adopted as proposed.

New § 1.975 relates to affidavits or declarations after appeal in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.977 relates to the decision by the Board of Patent Appeals and Interferences (Board) in *inter partes* reexamination proceedings. This section generally tracks § 1.196 which governs the Board's decision in an appeal in an application. Section 1.977(a) provides that a reversal of an examiner's decision favorable to patentability (*i.e.,* the reversal of the examiner's decision not to make a rejection proposed by the third party requester) constitutes a decision adverse to patentability which will be set forth as a new ground of rejection under § 1.977(b). Section § 1.977 as set forth in the notice of proposed rulemaking included a § 1.977(c) which permitted the Board to include a statement that a claim may be allowable in amended form if newly revised as proposed by the Board. Proposed § 1.977(c), however, has been deleted in light of the comment and discussion that follows.

Comment: The comment notes that under 1.977(c), as proposed, the Board of Patent Appeals and Interferences (Board) may suggest an amendment for allowing a claim. The comment suggests that procedures would be too complicated to implement in the *inter partes* proceeding.

Response to Comment: The comment is adopted. Providing for patent owner and third party comment on a Board determination of the patentability of a hypothetical amended claim appears to be unduly complicated so late in the proceedings. Section 1.977(c) as proposed in the notice of proposed rulemaking has been deleted. Sections 1.977(d)–(h) as proposed in the notice of proposed rulemaking have been redesignated §§ 1.977(c)–(g), respectively, and references to these subsections in other sections have been revised to reflect these changes.

New § 1.979 relates to the procedure following the decision or dismissal by the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.981 relates to the procedure for the reopening of prosecution following the decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. No comment was received on this section. It is adopted as proposed.

New § 1.983 relates to the patent owner's right to appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination proceedings. Under 35 U.S.C. 141, the patent owner in *inter partes* reexamination proceedings may appeal the decision of the Board of Patent Appeals and Interferences only to the United States Court of Appeals for the Federal Circuit. Under 35 U.S.C. 134(c), the third party requester in *inter partes* reexamination proceedings may not appeal the decision of the Board of Patent Appeals and Interferences. No comment was received on this section. It is adopted as proposed.

New § 1.985 relates to notification of prior or concurrent proceedings in *inter partes* reexamination proceedings. Section 1.985(a) requires the patent owner to notify the Office of any prior or concurrent proceeding involving the patent under *inter partes* reexamination. Section 1.985(b) permits any member of the public to notify the Office of any prior or concurrent proceeding involving the patent under *inter partes* reexamination. Such notice, however, must be limited to merely providing notice without discussion of the issues in the *inter partes* reexamination. Any notice that includes a discussion of the issues will be returned to the sender. No comment was received on this section. It is adopted as proposed.

New § 1.987 provides that when a patent involved in an *inter partes* reexamination is concurrently involved in litigation, the Commissioner shall determine whether or not to suspend the *inter partes* reexamination proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.989 relates to the merger of concurrent reexamination proceedings. One comment was received directed to this section.

Comment: The comment suggests that if a third party requester in an *inter partes* reexamination files a subsequent *ex parte* reexamination request, the proceedings should not be merged, but rather the *ex parte* reexamination should be stayed. The comment argues that a third party requester in an *inter partes* reexamination should not be permitted to end-run the prohibition of 35 U.S.C. 317(a) (which prohibits a subsequent *inter partes* reexamination during the pendency of an ongoing *inter partes* reexamination) by filing a subsequent *ex parte* reexamination request.

Response to Comment: As to the suggestion that the subsequent *ex parte* reexamination be stayed, this would be in direct violation of the special dispatch requirement of the *ex parte* reexamination statute. *Ethicon* v. *Quigg,* 849 F.2d 1422, 7 USPQ2d 1152 (Fed. Cir. 1988). Moreover, the filing of an *ex parte* reexamination request by an *inter partes* third party requester is not an ''end-run'' of the prohibition of 35 U.S.C. 317(a), because the two

proceedings are of a different nature, and thus, the filing of the *ex parte* reexamination is not the same as the filing of a second *inter partes* reexamination. The comment is not adopted and the section is adopted as proposed.

New § 1.991 relates to the merger of a concurrent reissue application and an *inter partes* reexamination proceeding. Two comments were received directed to this section.

Comments: The first comment suggests that if the patent owner is permitted to request an interview in a merged reissue and *inter partes* reexamination, then the third party requester should be permitted to do so equally as well.

The second comment notes that the third party requester is permitted by rule in a merged reexamination and reissue to participate to the extent permitted by the reexamination rules and be limited to issues within the scope of *inter partes* reexamination. The comment questions whether this is realistic and asks (1) whether this limitation precludes a third party from acting as a protestor in the merged reissue application regarding the full scope of issues raised in the merged proceeding; and (2) since the patent owner filed the reissue, why should the third party be precluded from participating as a protestor? The comment suggests a better approach would be to permit the third party to comment on any issue, so long as it was in accord with the procedures adopted for the conduct of the merged proceeding for third parties or protestors.

Response to Comments: The first comment suggests that if the patent owner is permitted to request an interview in a merged reissue and *inter partes* reexamination, the Office should also permit the third party requester to initiate an interview in the merged proceeding. The suggestion is moot, since the patent owner will not be permitted to request an interview in a merged reissue and *inter partes* reexamination for the reasons set forth in the discussion of § 1.955 above.

As to the second comment, the rule does not preclude the third party requester from filing a protest under § 1.291 in the reissue application in the merged proceeding directed to any issue, including issues other than those relating to patent and printed publications. Such protests would be governed by the procedures adopted for protestors set forth in Chapter 1900 of the Manual of Patent Examining Procedure (MPEP). Participation in issues raised under § 1.291 will be governed by § 1.291 and the procedures adopted for protestors in MPEP 1901 through 1907. To the extent that the second comment would permit the third party requester to ''comment'' (as opposed to filing a protest) on any issue, so long as it was in accord with the procedures adopted for the conduct of the merged proceeding for third parties or protestors, the comment will not be adopted. The right to file a protest is limited as stated in MPEP chapter 1900. Thus, the permitted challenge to the patent on ''any issue'' is limited. To permit third party requester ''comments'' on ''any issue'' would increase the pendency of the proceeding contrary to special dispatch required by the statute, and would permit harassment of the patent owner on ''any issue'' in ways that the Chapter 1900 limitations on protest submissions are designed to prevent (i.e., multiple submissions on the same issue). The comments are not adopted.

New § 1.993 relates to the suspension of a concurrent interference or an *inter partes* reexamination proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.995 relates to the third party requester's participation rights being preserved in a merged proceeding. No comment was received on this section. It is adopted as proposed.

New § 1.997 provides for the issuance of the reexamination certificate under 35 U.S.C. 316 after conclusion of an *inter partes* reexamination proceeding. The certificate will cancel any patent claims determined to be unpatentable, confirm any patent claims determined to be patentable, and incorporate into the patent any amended or new claims determined to be patentable. Once all of the claims have been canceled from the patent, the patent ceases to be enforceable for any purpose. Accordingly, any pending reissue proceeding or other Office proceeding relating to a patent for which a certificate that canceled all of the patent claims has been issued will be terminated. This provides a degree of assurance to the public that patents with all the claims canceled via *inter partes* reexamination proceedings will not again be asserted. No comment was received on this section. It is adopted as proposed.

Classification

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this notice will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rulemaking implements the provisions of title IV, subtitle F (§§ 4601 through 4608) of the American Inventors Protection Act of 1999, which permits a third party requester to participate more extensively during the reexamination proceeding as well as giving them appeal rights. The changes in this notice will provide procedures for a third party to request optional *inter partes* reexamination of a patent. The new *inter partes* proceedings are similar to the *ex parte* proceedings, although they are more complicated procedurally to accommodate the presence of the third party.

Taking into account the overall similarities and additional complexity, it is reasonable to assume that a similar proportion of small entities will request *inter partes* reexamination as have requested *ex parte* reexamination. Furthermore, it is anticipated that *inter partes* reexamination requests will be filed by third party requesters, while patent owners will continue to file *ex parte* reexamination requests. Approximately 400 *ex parte* reexamination filings have been received each year since 1992, of which 55 percent or 220 have been filed by third party requesters. Since the beginning of the reexamination procedure, about 22.5 percent of the *ex parte* reexamination requesters have been small entities. If all 220 of the third party-filed reexamination requests were filed as requests for *inter partes* reexaminations, approximately 50 requests (22.5%) would come from small entities. The higher cost of the *inter partes* reexamination fee ($8,800) compared to the *ex parte* reexamination fee ($2,520) reflects the greatly expanded participation available to the third party requester. In the *inter partes* proceeding, the third party requester has the right to comment on every response by the patent owner to the USPTO, to be a party to any appeal by the patent owner to the Board of Patent Appeals and Interferences, and to appeal any determination of patentability to the Board of Patent Appeals and Interferences. In the *ex parte* proceeding, the third party requester's role is limited to the request for reexamination and a single reply to the patent owner's response. The third party requester also has no appeal rights in an *ex parte* reexamination. Therefore, the number of small businesses affected by these proposed optional *inter parte* reexamination rules is not significant, and the impact on each business,

considering the benefits of greater participation throughout the *inter partes* proceeding, is not significant.

Executive Order 13132

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

Executive Order 12866

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

Paperwork Reduction Act

This notice of rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice of rulemaking has been reviewed and previously approved by OMB under OMB control number 0651–0033.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the U.S. Patent and Trademark Office has submitted an information collection package to OMB for its review and approval of the proposed information collections under OMB control number 0651–0033. The U.S. Patent and Trademark Office is submitting this information collection to OMB for its review and approval because this notice of rulemaking will add the request for optional *inter partes* reexamination of a patent to that collection.

The title, description, and respondent description of the information collection is shown below with an estimate of the annual reporting burdens. Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice of rulemaking is to implement the changes to Office practice necessitated by title IV, subtitle F (§§ 4601 through 4608) of the American Inventors Protection Act of 1999 (enacted into law by § 1000(a)(9), division B, of Public Law 106–113).

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.

Type of Review: Approved through September of 2000.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 172,475.

Estimated Time Per Response: 0.3 hour.

Estimated Total Annual Burden Hours: 51,593.5 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

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

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th St. NW, Room 10235, Washington, DC 20503, Attention: Desk Officer for the U.S. Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to or shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set out in the preamble and under the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 2(b)(2), part 1 of title 37 CFR is amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.4(a)(2) is revised to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of *ex parte* reexaminations of patents in subpart D, §§ 1.501 to 1.570; of interferences in subpart E, §§ 1.601 to 1.690; of extension of patent term in subpart F, §§ 1.710 to 1.785; of *inter partes* reexaminations of patents in subpart H, §§ 1.902 to 1.997; and of trademark applications §§ 2.11 to 2.189.

* * * * *

3. Section 1.6(d)(5) is revised to read as follows:

§ 1.6 Receipt of Correspondence.

* * * * *

(d) * * *

(5) A request for reexamination under § 1.510 or § 1.913;

* * * * *

4. Section 1.20(c) is revised to read as follows:

§ 1.20 Post-issuance and reexamination fees.

* * * * *

(c) In reexamination proceedings

(1) For filing a request for *ex parte* reexamination (§ 1.510(a))—$2,520.00

(2) For filing a request for *inter partes* reexamination (§ 1.915(a))—$8,800.00

* * * * *

5. Section 1.25(b) is revised to read as follows:

§ 1.25 Deposit accounts.

* * * * *

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with a particular paper filed. An

authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee. An authorization to charge fees under § 1.16 in an application submitted under § 1.494 or § 1.495 will be treated as an authorization to charge fees under § 1.492. An authorization to charge fees set forth in § 1.18 to a deposit account is subject to the provisions of § 1.311(b). An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 or § 1.913 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination.

6. Section 1.26(c) is revised to read as follows:

§ 1.26 Refunds.

* * * * *

(c) If the Commissioner decides not to institute a reexamination proceeding, for *ex parte* reexaminations filed under § 1.510, a refund of $1,690 will be made to the reexamination requester. For *inter partes* reexaminations filed under § 1.913, a refund of $7,970 will be made to the reexamination requester. The reexamination requester should indicate the form in which any refund should be made (e.g., by check, electronic funds transfer, credit to a deposit account, etc.). Generally, reexamination refunds will be issued in the form that the original payment was provided.

7. Section 1.112 is revised to read as follows:

§ 1.112 Reconsideration before final action.

After reply by applicant or patent owner (§ 1.111 or § 1.945) to a non-final action and any comments by an *inter partes* reexamination requester (§ 1.947), the application or the patent under reexamination will be reconsidered and again examined. The applicant, or in the case of a reexamination proceeding the patent owner and any third party requester, will be notified if claims are rejected, objections or requirements made, or decisions favorable to patentability are made, in the same manner as after the first examination (§ 1.104). Applicant or patent owner may reply to such Office action in the same manner provided in § 1.111 or § 1.945, with or without amendment, unless such Office action indicates that it is made final (§ 1.113) or an appeal (§ 1.191) has been taken (§ 1.116), or in an *inter partes* reexamination, that it is an action closing prosecution (§ 1.949) or a right of appeal notice (§ 1.953).

8. Section 1.113(a) is revised to read as follows:

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's, or for *ex parte* reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an *inter partes* reexamination filed under § 1.913, see § 1.953.

* * * * *

9. Sections 1.116(b) and (d) are revised to read as follows:

§ 1.116 Amendments after final action, action closing prosecution, right of appeal notice, or appeal.

* * * * *

(b) After a final rejection or other final action (§ 1.113) in an application or in an *ex parte* reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an *inter partes* reexamination filed under § 1.913, amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination from termination. No amendment can be made in an *inter partes* reexamination proceeding after the right of appeal notice under § 1.953 except as provided for in paragraph (d) of this section.

* * * * *

(d) No amendment can be made as a matter of right in appealed cases. After decision on appeal, amendments can only be made as provided in §§ 1.198 and 1.981, or to carry into effect a recommendation under § 1.196 or § 1.977.

10. Section 1.121(i) is revised to read as follows:

§ 1.121 Manner of making amendments.

* * * * *

(i) *Amendments in reexamination proceedings:* Any proposed amendment to the description and claims in patents involved in reexamination proceedings in both *ex parte* reexaminations filed under § 1.510 and *inter partes* reexaminations filed under § 1.913 must be made in accordance with § 1.530(d)–(j).

11. Sections 1.136(a)(2) and (b) are revised to read as follows:

§ 1.136 Extensions of time.

(a) * * *

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to §§ 1.193(b), 1.194, 1.196 or 1.197; § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; § 1.956 for extensions of time in *inter partes* reexamination proceedings; and § 1.645 for extensions of time in interference proceedings.

* * * * *

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.645 for extensions of time in interference proceedings; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; and

§ 1.956 for extensions of time in *inter partes* reexamination proceedings.

* * * * *

12. Sections 1.181(a) and (c) are revised to read as follows:

§ 1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner:

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and

(3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.

* * * * *

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.

* * * * *

13. Section 1.191(a) is revised to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(a) Every applicant for a patent or for reissue of a patent, and every owner of a patent under *ex parte* reexamination filed under § 1.510 for a patent that issued from an original application filed in the United States before November 29, 1999, any of whose claims has been twice or finally (§ 1.113) rejected, may appeal from the decision of the examiner to the Board of Patent Appeals and Interferences by filing a notice of appeal and the fee set forth in § 1.17(b) within the time period provided under §§ 1.134 and 1.136 for reply. Notwithstanding the above, for an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issued from an original application filed in the United States on or after November 29, 1999, no appeal may be filed until the claims have been finally rejected (§ 1.113). Appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings filed under § 1.913 are controlled by §§ 1.959 through 1.981. Sections 1.191 through 1.198 are not applicable to appeals in *inter partes* reexamination proceedings filed under § 1.913.

* * * * *

14. Section 1.301 is revised to read as follows:

§ 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.

Any applicant or any owner of a patent involved in any *ex parte* reexamination proceeding filed under § 1.510, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: In the U. S. Patent and Trademark Office, file a written notice of appeal directed to the Commissioner (see §§ 1.302 and 1.304); and in the Court, file a copy of the notice of appeal and pay the fee for appeal as provided by the rules of the Court. For *inter partes* reexamination proceedings filed under § 1.913, § 1.983 is controlling.

15. Section 1.303 is amended by revising paragraphs (a) and (b) and by adding a new paragraph (d) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

(a) Any applicant or any owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issues from an original application filed in the United States before November 29, 1999, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences may, instead of appealing to the U.S. Court of Appeals for the Federal Circuit (§ 1.301), have remedy by civil action under 35 U.S.C. 145 or 146, as appropriate. Such civil action must be commenced within the time specified in § 1.304.

(b) If an applicant in an *ex parte* case or an owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issues from an original application filed in the United States before November 29, 1999, has taken an appeal to the U.S. Court of Appeals for the Federal Circuit, he or she thereby waives his or her right to proceed under 35 U.S.C. 145.

* * * * *

(d) For an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issues from an original application filed in the United States on or after November 29, 1999, and for an *inter partes* reexamination proceeding filed under § 1.913, no remedy by civil action under 35 U.S.C. 145 is available.

16. Sections 1.304(a)(1) and (a)(2) are revised to read as follows:

§ 1.304 Time for appeal or civil action.

(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.197(b), § 1.658(b), or § 1.979(a), the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences the time for filing a cross-appeal or cross-action expires:

(i) Fourteen days after service of the notice of appeal or the summons and complaint; or

(ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

(2) The time periods set forth in this section are not subject to the provisions of § 1.136, § 1.550(c), § 1.956, or § 1.645(a) or (b).

* * * * *

17. The section heading for subpart D is revised to read as follows:

Subpart D—Ex Parte Reexamination of Patents

* * * * *

18. Section 1.501 is amended by revising paragraph (a) to read as follows:

§ 1.501 Citation of prior art in patent files.

(a) At any time during the period of enforceability of a patent, any person may cite, to the Office in writing, prior art consisting of patents or printed publications which that person states to be pertinent and applicable to the patent and believes to have a bearing on the patentability of any claim of the patent. If the citation is made by the patent owner, the explanation of pertinency and applicability may include an explanation of how the claims differ from the prior art. Such citations shall be entered in the patent file except as set forth in §§ 1.502 and 1.902.

* * * * *

19. New § 1.502 is added to read as follows:

§ 1.502 Processing of prior art citations during an *ex parte* reexamination proceeding.

Citations by the patent owner under § 1.555 and by an *ex parte* reexamination requester under either § 1.510 or § 1.535 will be entered in the reexamination file during a reexamination proceeding. The entry in the patent file of citations submitted after the date of an order to reexamine pursuant to § 1.525 by persons other than the patent owner, or an *ex parte* reexamination requester under either § 1.510 or § 1.535, will be delayed until the reexamination proceeding has been terminated. See § 1.902 for processing of prior art citations in patent and reexamination files during an *inter partes* reexamination proceeding filed under § 1.913.

20. The undesignated center heading immediately preceding § 1.510 is revised as follows:

Request for *Ex Parte* Reexamination

21. Section 1.510 is amended by revising its heading and paragraph (a) to read as follows:

§ 1.510 Request for *ex parte* reexamination.

(a) Any person may, at any time during the period of enforceability of a patent, file a request for an *ex parte* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501. The request must be accompanied by the fee for requesting reexamination set in § 1.20(c)(1).

* * * * *

22. Section 1.515 is amended by revising its heading and the text to read as follows:

§ 1.515 Determination of the request for *ex parte* reexamination.

(a) Within three months following the filing date of a request for an *ex parte* reexamination, an examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications. The examiner's determination will be based on the claims in effect at the time of the determination, will become a part of the official file of the patent, and will be mailed to the patent owner at the address as provided for in § 1.33(c) and to the person requesting reexamination.

(b) Where no substantial new question of patentability has been found, a refund of a portion of the fee for requesting *ex parte* reexamination will be made to the requester in accordance with § 1.26(c).

(c) The requester may seek review by a petition to the Commissioner under § 1.181 within one month of the mailing date of the examiner's determination refusing *ex parte* reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that no substantial new question of patentability has been raised, the determination shall be final and nonappealable.

23. Section 1.520 is amended by revising its heading and the text to read as follows:

§ 1.520 *Ex parte* reexamination at the initiative of the Commissioner.

The Commissioner, at any time during the period of enforceability of a patent, may determine whether or not a substantial new question of patentability is raised by patents or printed publications which have been discovered by the Commissioner or which have been brought to the Commissioner's attention, even though no request for reexamination has been filed in accordance with § 1.510 or § 1.913. The Commissioner may initiate *ex parte* reexamination without a request for reexamination pursuant to § 1.510 or § 1.913. Normally requests from outside the Office that the Commissioner undertake reexamination on his own initiative will not be considered. Any determination to initiate *ex parte* reexamination under this section will become a part of the official file of the patent and will be mailed to the patent owner at the address as provided for in § 1.33(c).

24. The undesignated center heading following § 1.520 is revised to read as follows:

Ex Parte Reexamination

25. Section 1.525 is amended by revising its heading and the text of paragraphs (a) and (b) to read as follows:

§ 1.525 Order for *ex parte* reexamination.

(a) If a substantial new question of patentability is found pursuant to § 1.515 or § 1.520, the determination will include an order for *ex parte* reexamination of the patent for resolution of the question. If the order for *ex parte* reexamination resulted from a petition pursuant to § 1.515(c), the *ex parte* reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under § 1.515(a).

(b) The notice published in the *Official Gazette* under § 1.11(c) will be considered to be constructive notice and *ex parte* reexamination will proceed.

26. Section 1.530 is amended by revising its heading and paragraphs (a), (b), (c), (d) introductory text, and (l) to read as follows:

§ 1.530 Statement by patent owner in *ex parte* reexamination; amendment by patent owner in *ex parte* or *inter partes* reexamination; inventorship change in *ex parte* or *inter partes* reexamination.

(a) Except as provided in § 1.510(e), no statement or other response by the patent owner in an *ex parte* reexamination proceeding shall be filed prior to the determinations made in accordance with § 1.515 or § 1.520. If a premature statement or other response is filed by the patent owner, it will not be acknowledged or considered in making the determination.

(b) The order for *ex parte* reexamination will set a period of not less than two months from the date of the order within which the patent owner may file a statement on the new question of patentability, including any proposed amendments the patent owner wishes to make.

(c) Any statement filed by the patent owner shall clearly point out why the subject matter as claimed is not anticipated or rendered obvious by the prior art patents or printed publications, either alone or in any reasonable combinations. Where the reexamination request was filed by a third party requester, any statement filed by the patent owner must be served upon the *ex parte* reexamination requester in accordance with § 1.248.

(d) *Making amendments in a reexamination proceeding.* A proposed amendment in an *ex parte* or an *inter partes* reexamination proceeding is made by filing a paper directing that proposed specified changes be made to the patent specification, including the claims, or to the drawings. An amendment paper directing that proposed specified changes be made in a reexamination proceeding may be submitted as an accompaniment to a request filed by the patent owner in accordance with § 1.510(e), as part of a patent owner statement in accordance with paragraph (b) of this section, or, where permitted, during the prosecution of the reexamination proceeding pursuant to § 1.550(a) or § 1.937.

* * * * *

(l) *Correction of inventorship in an ex parte or inter partes reexamination proceeding.*

(1) When it appears in a patent being reexamined that the correct inventor or inventors were not named through error without deceptive intention on the part

of the actual inventor or inventors, the Commissioner may, on petition of all the parties set forth in § 1.324(b)(1)–(3), including the assignees, and satisfactory proof of the facts and payment of the fee set forth in § 1.20(b), or on order of a court before which such matter is called in question, include in the reexamination certificate to be issued under § 1.570 or § 1.977 an amendment naming only the actual inventor or inventors. The petition must be submitted as part of the reexamination proceeding and must satisfy the requirements of § 1.324.

(2) Notwithstanding the preceding paragraph (1)(1) of this section, if a petition to correct inventorship satisfying the requirements of § 1.324 is filed in a reexamination proceeding, and the reexamination proceeding is terminated other than by a reexamination certificate under § 1.570 or § 1.977, a certificate of correction indicating the change of inventorship stated in the petition will be issued upon request by the patentee.

27. Section 1.535 is revised to read as follows:

§ 1.535 Reply by third party requester in *ex parte* reexamination.

A reply to the patent owner's statement under § 1.530 may be filed by the *ex parte* reexamination requester within two months from the date of service of the patent owner's statement. Any reply by the *ex parte* requester must be served upon the patent owner in accordance with § 1.248. If the patent owner does not file a statement under § 1.530, no reply or other submission from the *ex parte* reexamination requester will be considered.

28. Section 1.540 is revised to read as follows:

§ 1.540 Consideration of responses in *ex parte* reexamination.

The failure to timely file or serve the documents set forth in § 1.530 or in § 1.535 may result in their being refused consideration. No submissions other than the statement pursuant to § 1.530 and the reply by the *ex parte* reexamination requester pursuant to § 1.535 will be considered prior to examination.

29. Section 1.550 is revised to read as follows:

§ 1.550 Conduct of *ex parte* reexamination proceedings.

(a) All *ex parte* reexamination proceedings, including any appeals to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office. After issuance of the *ex parte* reexamination order and expiration of the time for submitting any responses, the examination will be conducted in accordance with §§ 1.104 through 1.116 and will result in the issuance of an *ex parte* reexamination certificate under § 1.570.

(b) The patent owner in an *ex parte* reexamination proceeding will be given at least thirty days to respond to any Office action. In response to any rejection, such response may include further statements and/or proposed amendments or new claims to place the patent in a condition where all claims, if amended as proposed, would be patentable.

(c) The time for taking any action by a patent owner in an *ex parte* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. See § 1.304(a) for extensions of time for filing a notice of appeal to the U. S. Court of Appeals for the Federal Circuit or for commencing a civil action.

(d) If the patent owner fails to file a timely and appropriate response to any Office action or any written statement of an interview required under § 1.560(b), the *ex parte* reexamination proceeding will be terminated, and the Commissioner will proceed to issue a certificate under § 1.570 in accordance with the last action of the Office.

(e) If a response by the patent owner is not timely filed in the Office,

(1) The delay in filing such response may be excused if it is shown to the satisfaction of the Commissioner that the delay was unavoidable; a petition to accept an unavoidably delayed response must be filed in compliance with § 1.137(a); or

(2) The response may nevertheless be accepted if the delay was unintentional; a petition to accept an unintentionally delayed response must be filed in compliance with § 1.137(b).

(f) The reexamination requester will be sent copies of Office actions issued during the *ex parte* reexamination proceeding. After filing of a request for *ex parte* reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party in the reexamination proceeding in the manner provided by § 1.248. The document must reflect service or the document may be refused consideration by the Office.

(g) The active participation of the *ex parte* reexamination requester ends with the reply pursuant to § 1.535, and no further submissions on behalf of the reexamination requester will be acknowledged or considered. Further, no submissions on behalf of any third parties will be acknowledged or considered unless such submissions are:

(1) in accordance with § 1.510 or § 1.535; or

(2) entered in the patent file prior to the date of the order for *ex parte* reexamination pursuant to § 1.525.

(h) Submissions by third parties, filed after the date of the order for *ex parte* reexamination pursuant to § 1.525, must meet the requirements of and will be treated in accordance with § 1.501(a).

30. Section 1.552 is revised to read as follows:

§ 1.552 Scope of reexamination in *ex parte* reexamination proceedings.

(a) Claims in an *ex parte* reexamination proceeding will be examined on the basis of patents or printed publications and, with respect to subject matter added or deleted in the reexamination proceeding, on the basis of the requirements of 35 U.S.C. 112.

(b) Claims in an *ex parte* reexamination proceeding will not be permitted to enlarge the scope of the claims of the patent.

(c) Issues other than those indicated in paragraphs (a) and (b) of this section will not be resolved in a reexamination proceeding. If such issues are raised by the patent owner or third party requester during a reexamination proceeding, the existence of such issues will be noted by the examiner in the next Office action, in which case the patent owner may consider the advisability of filing a reissue application to have such issues considered and resolved.

31. Section 1.555 is amended by revising its heading and paragraph (c) to read as follows:

§ 1.555 Information material to patentability in *ex parte* reexamination and *inter partes* reexamination proceedings.

* * * * *

(c) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are raised by the patent owner or the third party requester during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

32. Section 1.560 is revised to read as follows:

§ 1.560 Interviews in *ex parte* reexamination proceedings.

(a) Interviews in *ex parte* reexamination proceedings pending before the Office between examiners and the owners of such patents or their attorneys or agents of record must be conducted in the Office at such times, within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Commissioner. Interviews for the discussion of the patentability of claims in patents involved in *ex parte* reexamination proceedings will not be conducted prior to the first official action. Interviews should be arranged in advance. Requests that reexamination requesters participate in interviews with examiners will not be granted.

(b) In every instance of an interview with an examiner in an *ex parte* reexamination proceeding, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the patent owner. An interview does not remove the necessity for response to Office actions as specified in § 1.111. Patent owner's response to an outstanding Office action after the interview does not remove the necessity for filing the written statement. The written statement must be filed as a separate part of a response to an Office action outstanding at the time of the interview, or as a separate paper within one month from the date of the interview, whichever is later.

33. Section 1.565 is revised to read as follows:

§ 1.565 Concurrent office proceedings which include an *ex parte* reexamination proceeding.

(a) In an *ex parte* reexamination proceeding before the Office, the patent owner must inform the Office of any prior or concurrent proceedings in which the patent is or was involved such as interferences, reissues, *ex parte* reexaminations, *inter partes* reexaminations, or litigation and the results of such proceedings. See § 1.985 for notification of prior or concurrent proceedings in an *inter partes* reexamination proceeding.

(b) If a patent in the process of *ex parte* reexamination is or becomes involved in litigation, the Commissioner shall determine whether or not to suspend the reexamination. See § 1.987 for *inter partes* reexamination proceedings.

(c) If *ex parte* reexamination is ordered while a prior *ex parte* reexamination proceeding is pending and prosecution in the prior *ex parte* reexamination proceeding has not been terminated, the *ex parte* reexamination proceedings will be consolidated and result in the issuance of a single certificate under § 1.570. For merger of *inter partes* reexamination proceedings, see § 1.989(a). For merger of *ex parte* reexamination and *inter partes* reexamination proceedings, see § 1.989(b).

(d) If a reissue application and an *ex parte* reexamination proceeding on which an order pursuant to § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to suspend one of the two proceedings. Where merger of a reissue application and an *ex parte* reexamination proceeding is ordered, the merged examination will be conducted in accordance with §§ 1.171 through 1.179, and the patent owner will be required to place and maintain the same claims in the reissue application and the *ex parte* reexamination proceeding during the pendency of the merged proceeding. The examiner's actions and responses by the patent owner in a merged proceeding will apply to both the reissue application and the *ex parte* reexamination proceeding and be physically entered into both files. Any *ex parte* reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent. For merger of a reissue application and an *inter partes* reexamination, see § 1.991.

(e) If a patent in the process of *ex parte* reexamination is or becomes involved in an interference, the Commissioner may suspend the reexamination or the interference. The Commissioner will not consider a request to suspend an interference unless a motion (§ 1.635) to suspend the interference has been presented to, and denied by, an administrative patent judge, and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set. For concurrent *inter partes* reexamination and interference of a patent, see § 1.993.

34. The undesignated center heading following § 1.565 is revised to read as follows:

Ex Parte Reexamination Certificate

35. Section 1.570 is revised to read as follows:

§ 1.570 Issuance of *ex parte* reexamination certificate after *ex parte* reexamination proceedings.

(a) Upon the conclusion of *ex parte* reexamination proceedings, the Commissioner will issue an *ex parte* reexamination certificate in accordance with 35 U.S.C. 307 setting forth the results of the *ex parte* reexamination proceeding and the content of the patent following the *ex parte* reexamination proceeding.

(b) An *ex parte* reexamination certificate will be issued in each patent in which an *ex parte* reexamination proceeding has been ordered under § 1.525 and has not been merged with any *inter partes* reexamination proceeding pursuant to § 1.989(a). Any statutory disclaimer filed by the patent owner will be made part of the *ex parte* reexamination certificate.

(c) The *ex parte* reexamination certificate will be mailed on the day of its date to the patent owner at the address as provided for in § 1.33(c). A copy of the *ex parte* reexamination certificate will also be mailed to the requester of the *ex parte* reexamination proceeding.

(d) If an *ex parte* reexamination certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with that patent or any reissue applications or any reexamination requests relating thereto.

(e) If the *ex parte* reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.565(d), the reissued patent will constitute the *ex parte* reexamination certificate required by this section and 35 U.S.C. 307.

(f) A notice of the issuance of each *ex parte* reexamination certificate under this section will be published in the *Official Gazette* on its date of issuance.

36. A new subpart H is added to read as follows:

Subpart H—*Inter Partes* Reexamination of Patents That Issued From an Original Application Filed in the United States on or After November 29, 1999

Sec.

Prior Art Citations

1.902 Processing of prior art citations during an *inter partes* reexamination proceeding.

Requirements for *Inter Partes* Reexamination Proceedings

1.903 Service of papers on parties in *inter partes* reexamination.
1.904 Notice of *inter partes* reexamination in Official Gazette.
1.905 Submission of papers by the public in *inter partes* reexamination.
1.906 Scope of reexamination in *inter partes* reexamination proceeding.

1.907 *Inter partes* reexamination prohibited.
1.913 Persons eligible to file request for *inter partes* reexamination.
1.915 Content of request for *inter partes* reexamination.
1.919 Filing date of request for *inter partes* reexamination.
1.923 Examiner's determination on the request for *inter partes* reexamination.
1.925 Partial refund if request for *inter partes* reexamination is not ordered.
1.927 Petition to review refusal to order *inter partes* reexamination.

Inter Partes Reexamination of Patents

1.931 Order for *inter partes* reexamination.

Information Disclosure in *Inter Partes* Reexamination

1.933 Patent owner duty of disclosure in *inter partes* reexamination proceedings.

Office Actions and Responses (Before the Examiner) in *Inter Partes* Reexamination

1.935 Initial Office action usually accompanies order for *inter partes* reexamination.
1.937 Conduct of *inter partes* reexamination.
1.939 Unauthorized papers in *inter partes* reexamination.
1.941 Amendments by patent owner in *inter partes* reexamination.
1.943 Requirements of responses, written comments, and briefs in *inter partes* reexamination.
1.945 Response to Office action by patent owner in *inter partes* reexamination.
1.947 Comments by third party requester to patent owner's response in *inter partes* reexamination.
1.948 Limitations on submission of prior art by third party requester following the order for *inter partes* reexamination.
1.949 Examiner's Office action closing prosecution in *inter partes* reexamination.
1.951 Options after Office action closing prosecution in *inter partes* reexamination.
1.953 Examiner's Right of Appeal Notice in *inter partes* reexamination.

Interviews Prohibited in *Inter Partes* Reexamination

1.955 Interviews prohibited in *inter partes* reexamination proceedings.

Extensions of Time, Termination of Proceedings, and Petitions To Revive in *Inter Partes* Reexamination

1.956 Patent owner extensions of time in *inter partes* reexamination.
1.957 Failure to file a timely, appropriate or complete response or comment in *inter partes* reexamination.
1.958 Petition to revive terminated *inter partes* reexamination or claims terminated for lack of patent owner response.

Appeal to the Board of Patent Appeals and Interferences in *Inter Partes* Reexamination

1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences in *inter partes* reexamination.
1.961 Jurisdiction over appeal in inter partes reexamination.
1.962 Appellant and respondent in *inter partes* reexamination defined.
1.963 Time for filing briefs in *inter partes* reexamination.
1.965 Appellant's brief in *inter partes* reexamination.
1.967 Respondent's brief in *inter partes* reexamination.
1.969 Examiner's answer in *inter partes* reexamination.
1.971 Rebuttal brief in *inter partes* reexamination.
1.973 Oral hearing in *inter partes* reexamination.
1.975 Affidavits or declarations after appeal in *inter partes* reexamination.
1.977 Decision by the Board of Patent Appeals and Interferences; remand to examiner in *inter partes* reexamination.
1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in *inter partes* reexamination.
1.981 Reopening after decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination.

Patent Owner Appeal to the United States Court of Appeals for the Federal Circuit in *Inter Partes* Reexamination

1.983 Patent owner appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination.

Concurrent Proceedings Involving Same Patent in *InterPartes* Reexamination

1.985 Notification of prior or concurrent proceedings in *inter partes* reexamination.
1.987 Suspension of *inter partes* reexamination proceeding due to litigation.
1.989 Merger of concurrent reexamination proceedings.
1.991 Merger of concurrent reissue application and *inter partes* reexamination proceeding.
1.993 Suspension of concurrent interference and *inter partes* reexamination proceeding.
1.995 Third party requester's participation rights preserved in merged proceeding.

Reexamination Certificate in *Inter Partes* Reexamination

1.997 Issuance of inter partes reexamination certificate.

Subpart H—*Inter Partes* Reexamination of Patents That Issued From an Original Application Filed in the United States on or After November 29, 1999

Prior Art Citations

§ 1.902 Processing of prior art citations during an *inter partes* reexamination proceeding.

Citations by the patent owner in accordance with § 1.933 and by an *inter partes* reexamination third party requester under § 1.915 or § 1.948 will be entered in the *inter partes* reexamination file. The entry in the patent file of other citations submitted after the date of an order for reexamination pursuant to § 1.931 by persons other than the patent owner, or the third party requester under either § 1.915 or § 1.948, will be delayed until the *inter partes* reexamination proceeding has been terminated. See § 1.502 for processing of prior art citations in patent and reexamination files during an *ex parte* reexamination proceeding filed under § 1.510.

Requirements for *Inter Partes* Reexamination Proceedings

§ 1.903 Service of papers on parties in *inter partes* reexamination.

The patent owner and the third party requester will be sent copies of Office actions issued during the *inter partes* reexamination proceeding. After filing of a request for *inter partes* reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on every other party in the reexamination proceeding in the manner provided in § 1.248. Any document must reflect service or the document may be refused consideration by the Office. The failure of the patent owner or the third party requester to serve documents may result in their being refused consideration.

§ 1.904 Notice of *inter partes* reexamination in Official Gazette.

A notice of the filing of an *inter partes* reexamination request will be published in the *Official Gazette*. The notice published in the *Official Gazette* under § 1.11(c) will be considered to be constructive notice of the *inter partes* reexamination proceeding and *inter partes* reexamination will proceed.

§ 1.905 Submission of papers by the public in *inter partes* reexamination.

Unless specifically provided for, no submissions on behalf of any third parties other than third party requesters as defined in 35 U.S.C. 100(e) will be considered unless such submissions are in accordance with § 1.915 or entered in the patent file prior to the date of the order for reexamination pursuant to § 1.931. Submissions by third parties, other than third party requesters, filed after the date of the order for reexamination pursuant to § 1.931, must meet the requirements of § 1.501 and will be treated in accordance with § 1.902. Submissions which do not meet the requirements of § 1.501 will be returned.

§ 1.906 Scope of reexamination in *inter partes* reexamination proceeding.

(a) Claims in an *inter partes* reexamination proceeding will be

examined on the basis of patents or printed publications and, with respect to subject matter added or deleted in the reexamination proceeding, on the basis of the requirements of 35 U.S.C. 112.

(b) Claims in an *inter partes* reexamination proceeding will not be permitted to enlarge the scope of the claims of the patent.

(c) Issues other than those indicated in paragraphs (a) and (b) of this section will not be resolved in an *inter partes* reexamination proceeding. If such issues are raised by the patent owner or the third party requester during a reexamination proceeding, the existence of such issues will be noted by the examiner in the next Office action, in which case the patent owner may desire to consider the advisability of filing a reissue application to have such issues considered and resolved.

§ 1.907 *Inter partes* reexamination prohibited.

(a) Once an order to reexamine has been issued under § 1.931, neither the third party requester, nor its privies, may file a subsequent request for *inter partes* reexamination of the patent until an *inter partes* reexamination certificate is issued under § 1.997, unless authorized by the Commissioner.

(b) Once a final decision has been entered against a party in a civil action arising in whole or in part under 28 U.S.C. 1338 that the party has not sustained its burden of proving invalidity of any patent claim-in-suit, then neither that party nor its privies may thereafter request *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such civil action, and an *inter partes* reexamination requested by that party, or its privies, on the basis of such issues may not thereafter be maintained by the Office.

(c) If a final decision in an *inter partes* reexamination proceeding instituted by a third party requester is favorable to patentability of any original, proposed amended, or new claims of the patent, then neither that party nor its privies may thereafter request *inter partes* reexamination of any such patent claims on the basis of issues which that party, or its privies, raised or could have raised in such *inter partes* reexamination proceeding.

§ 1.913 Persons eligible to file request for *inter partes* reexamination.

Except as provided for in § 1.907, any person may, at any time during the period of enforceability of a patent which issued from an original application filed in the United States on or after November 29, 1999, file a request for *inter partes* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501.

§ 1.915 Content of request for *inter partes* reexamination.

(a) The request must be accompanied by the fee for requesting *inter partes* reexamination set forth in § 1.20(c)(2).

(b) A request for *inter partes* reexamination must include the following parts:

(1) An identification of the patent by patent number and every claim for which reexamination is requested.

(2) A citation of the patents and printed publications which are presented to provide a substantial new question of patentability.

(3) A statement pointing out each substantial new question of patentability based on the cited patents and printed publications, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested.

(4) A copy of every patent or printed publication relied upon or referred to in paragraphs (b)(1) through (3) of this section, accompanied by an English language translation of all the necessary and pertinent parts of any non-English language document.

(5) A copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent. All copies must have each page plainly written on only one side of a sheet of paper.

(6) A certification by the third party requester that a copy of the request has been served in its entirety on the patent owner at the address provided for in § 1.33(c). The name and address of the party served must be indicated. If service was not possible, a duplicate copy of the request must be supplied to the Office.

(7) A certification by the third party requester that the estoppel provisions of § 1.907 do not prohibit the *inter partes* reexamination.

(8) A statement identifying the real party in interest to the extent necessary for a subsequent person filing an *inter partes* reexamination request to determine whether that person is a privy.

(c) If an *inter partes* request is filed by an attorney or agent identifying another party on whose behalf the request is being filed, the attorney or agent must have a power of attorney from that party or be acting in a representative capacity pursuant to § 1.34(a).

(d) If the *inter partes* request does not meet all the requirements of subsection 1.915(b), the person identified as requesting *inter partes* reexamination may be so notified and given an opportunity to complete the formal requirements of the request within a specified time. Failure to comply with the notice may result in the *inter partes* reexamination proceeding being vacated.

§ 1.919 Filing date of request for *inter partes* reexamination.

(a) The filing date of a request for *inter partes* reexamination is the date on which the request satisfies the fee requirement of § 1.915(a).

(b) If the request is not granted a filing date, the request will be placed in the patent file as a citation of prior art if it complies with the requirements of § 1.501.

§ 1.923 Examiner's determination on the request for *inter partes* reexamination.

Within three months following the filing date of a request for *inter partes* reexamination under § 1.919, the examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art citation. The examiner's determination will be based on the claims in effect at the time of the determination, will become a part of the official file of the patent, and will be mailed to the patent owner at the address as provided for in § 1.33(c) and to the third party requester. If the examiner determines that no substantial new question of patentability is present, the examiner shall refuse the request and shall not order *inter partes* reexamination.

§ 1.925 Partial refund if request for *inter partes* reexamination is not ordered.

Where *inter partes* reexamination is not ordered, a refund of a portion of the fee for requesting *inter partes* reexamination will be made to the requester in accordance with § 1.26(c).

§ 1.927 Petition to review refusal to order *inter partes* reexamination.

The third party requester may seek review by a petition to the Commissioner under§ 1.181 within one month of the mailing date of the examiner's determination refusing to order *inter partes* reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that

no substantial new question of patentability has been raised, the determination shall be final and nonappealable.

Inter Partes Reexamination of Patents

§ 1.931 Order for *inter partes* reexamination.

(a) If a substantial new question of patentability is found, the determination will include an order for *inter partes* reexamination of the patent for resolution of the question.

(b) If the order for *inter partes* reexamination resulted from a petition pursuant to § 1.927, the *inter partes* reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under § 1.923.

Information Disclosure in *Inter Partes* Reexamination

§ 1.933 Patent owner duty of disclosure in *inter partes* reexamination proceedings.

(a) Each individual associated with the patent owner in an *inter partes* reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding as set forth in § 1.555(a) and (b). The duty to disclose all information known to be material to patentability in an *inter partes* reexamination proceeding is deemed to be satisfied by filing a paper in compliance with the requirements set forth in § 1.555(a) and (b).

(b) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section, and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are raised by the patent owner or the third party requester during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.906(c).

Office Actions and Responses (Before the Examiner) in *Inter Partes* Reexamination

§ 1.935 Initial Office action usually accompanies order for *inter partes* reexamination.

The order for *inter partes* reexamination will usually be accompanied by the initial Office action on the merits of the reexamination.

§ 1.937 Conduct of *inter partes* reexamination.

(a) All *inter partes* reexamination proceedings, including any appeals to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office, unless the Commissioner makes a determination that there is good cause for suspending the reexamination proceeding.

(b) The *inter partes* reexamination proceeding will be conducted in accordance with §§ 1.104 through 1.116, the sections governing the application examination process, and will result in the issuance of an *inter partes* reexamination certificate under § 1.997, except as otherwise provided.

(c) All communications between the Office and the parties to the *inter partes* reexamination which are directed to the merits of the proceeding must be in writing and filed with the Office for entry into the record of the proceeding.

§ 1.939 Unauthorized papers in *inter partes* reexamination.

(a) If an unauthorized paper is filed by any party at any time during the *inter partes* reexamination proceeding it will not be considered and may be returned.

(b) Unless otherwise authorized, no paper shall be filed prior to the initial Office action on the merits of the *inter partes* reexamination.

§ 1.941 Amendments by patent owner in *inter partes* reexamination.

Amendments by patent owner in *inter partes* reexamination proceedings are made by filing a paper in compliance with §§ 1.530(d)–(k) and 1.943.

§ 1.943 Requirements of responses, written comments, and briefs in *inter partes* reexamination.

(a) The form of responses, written comments, briefs, appendices, and other papers must be in accordance with the requirements of § 1.52.

(b) Responses by the patent owner and written comments by the third party requester shall not exceed 50 pages in length, excluding amendments, appendices of claims, and reference materials such as prior art references.

(c) Appellant's briefs filed by the patent owner and the third party requester shall not exceed thirty pages or 14,000 words in length, excluding appendices of claims and reference materials such as prior art references. All other briefs filed by any party shall not exceed fifteen pages in length or 7,000 words. If the page limit for any brief is exceeded, a certificate is required stating the number of words contained in the brief.

§ 1.945 Response to Office action by patent owner in *inter partes* reexamination.

The patent owner will be given at least thirty days to file a response to any Office action on the merits of the *inter partes* reexamination.

§ 1.947 Comments by third party requester to patent owner's response in *inter partes* reexamination.

Each time the patent owner files a response to an Office action on the merits pursuant to § 1.945, a third party requester may once file written comments within a period of 30 days from the date of service of the patent owner's response. These comments shall be limited to issues raised by the Office action or the patent owner's response. The time for submitting comments by the third party requester may not be extended. For the purpose of filing the written comments by the third party requester, the comments will be considered as having been received in the Office as of the date of deposit specified in the certificate under § 1.8.

§ 1.948 Limitations on submission of prior art by third party requester following the order for *inter partes* reexamination.

(a) After the *inter partes* reexamination order, the third party requester may only cite additional prior art as defined under § 1.501 if it is filed as part of a comments submission under § 1.947 or § 1.951(b) and is limited to prior art:

(1) which is necessary to rebut a finding of fact by the examiner;

(2) which is necessary to rebut a response of the patent owner; or

(3) which for the first time became known or available to the third party requester after the filing of the request for *inter partes* reexamination proceeding. Prior art submitted under paragraph (a)(3) of this section must be accompanied by a statement as to when the prior art first became known or available to the third party requester and must include a discussion of the pertinency of each reference to the patentability of at least one claim.

(b) [Reserved].

§ 1.949 Examiner's Office action closing prosecution in *inter partes* reexamination.

Upon consideration of the issues a second or subsequent time, or upon a determination of patentability of all claims, the examiner shall issue an Office action treating all claims present in the *inter partes* reexamination, which may be an action closing prosecution. The Office action shall set forth all rejections and determinations not to make a proposed rejection, and the grounds therefor. An Office action will not usually close prosecution if it

includes a new ground of rejection which was not previously addressed by the patent owner, unless the new ground was necessitated by an amendment.

§ 1.951 Options after Office action closing prosecution in *inter partes* reexamination.

(a) After an Office action closing prosecution in an *inter partes* reexamination, the patent owner may once file comments limited to the issues raised in the Office action closing prosecution. The comments can include a proposed amendment to the claims, which amendment will be subject to the criteria of § 1.116 as to whether or not it shall be admitted. The comments must be filed within the time set for response in the Office action closing prosecution.

(b) When the patent owner does file comments, a third party requester may once file comments responsive to the patent owner's comments within 30 days from the date of service of patent owner's comments on the third party requester.

§ 1.953 Examiner's Right of Appeal Notice in *inter partes* reexamination.

(a) Upon considering the comments of the patent owner and the third party requester subsequent to the Office action closing prosecution in an *inter partes* reexamination, or upon expiration of the time for submitting such comments, the examiner shall issue a Right of Appeal Notice, unless the examiner reopens prosecution and issues another Office action on the merits.

(b) Expedited Right of Appeal Notice: At any time after the patent owner's response to the initial Office action on the merits in an *inter partes* reexamination, the patent owner and all third party requesters may stipulate that the issues are appropriate for a final action, which would include a final rejection and/or a final determination favorable to patentability, and may request the issuance of a Right of Appeal Notice. The request must have the concurrence of the patent owner and all third party requesters present in the proceeding and must identify all the appealable issues and the positions of the patent owner and all third party requesters on those issues. If the examiner determines that no other issues are present or should be raised, a Right of Appeal Notice limited to the identified issues shall be issued. Any appeal by the parties shall be conducted in accordance with §§ 1.959–1.983.

(c) The Right of Appeal Notice shall be a final action, which comprises a final rejection setting forth each ground of rejection and/or final decision favorable to patentability including each determination not to make a proposed rejection, an identification of the status of each claim, and the reasons for decisions favorable to patentability and/or the grounds of rejection for each claim. No amendment can be made in response to the Right of Appeal Notice. The Right of Appeal Notice shall set a one-month time period for either party to appeal. If no notice of appeal is filed, the *inter partes* reexamination proceeding will be terminated, and the Commissioner will proceed to issue a certificate under § 1.997 in accordance with the Right of Appeal Notice.

Interviews Prohibited in *Inter Partes* Reexamination

§ 1.955 Interviews prohibited in *inter partes* reexamination proceedings.

There will be no interviews in an *inter partes* reexamination proceeding which discuss the merits of the proceeding.

Extensions of Time, Termination of Proceedings, and Petitions To Revive in *Inter Partes* Reexamination

§ 1.956 Patent owner extensions of time in *inter partes* reexamination.

The time for taking any action by a patent owner in an *inter partes* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. *See* § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

§ 1.957 Failure to file a timely, appropriate or complete response or comment in *inter partes* reexamination.

(a) If the third party requester files an untimely or inappropriate comment, notice of appeal or brief in an *inter partes* reexamination, the paper will be refused consideration.

(b) If no claims are found patentable, and the patent owner fails to file a timely and appropriate response in an *inter partes* reexamination proceeding, the reexamination proceeding will be terminated and the Commissioner will proceed to issue a certificate under § 1.997 in accordance with the last action of the Office.

(c) If claims are found patentable and the patent owner fails to file a timely and appropriate response to any Office action in an *inter partes* reexamination proceeding, further prosecution will be limited to the claims found patentable at the time of the failure to respond, and to any claims added thereafter which do not expand the scope of the claims which were found patentable at that time.

(d) When action by the patent owner is a *bona fide* attempt to respond and to advance the prosecution and is substantially a complete response to the Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, an opportunity to explain and supply the omission may be given.

§ 1.958 Petition to revive terminated *inter partes* reexamination or claims terminated for lack of patent owner response.

(a) If a response by the patent owner is not timely filed in the Office, the delay in filing such response may be excused if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A grantable petition to accept an unavoidably delayed response must be filed in compliance with § 1.137(a).

(b) Any response by the patent owner not timely filed in the Office may be accepted if the delay was unintentional. A grantable petition to accept an unintentionally delayed response must be filed in compliance with § 1.137(b).

Appeal to the Board of Patent Appeals and Interferences in *Inter Partes* Reexamination

§ 1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences in *inter partes* reexamination.

(a)(1) Upon the issuance of a Right of Appeal Notice under § 1.953, the patent owner involved in an *inter partes* reexamination proceeding may appeal to the Board of Patent Appeals and Interferences with respect to the final rejection of any claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 1.17(b).

(2) Upon the issuance of a Right of Appeal Notice under § 1.953, a third party requester involved in an *inter partes* reexamination proceeding may appeal to the Board of Patent Appeals and Interferences with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 1.17(b).

(b)(1) Within fourteen days of service of a third party requester's notice of appeal under paragraph (a)(2) of this section and upon payment of the fee set forth in § 1.17(b), a patent owner who has not filed a notice of appeal may file

a notice of cross appeal with respect to the final rejection of any claim of the patent.

(2) Within fourteen days of service of a patent owner's notice of appeal under paragraph (a)(1) of this section and upon payment of the fee set forth in § 1.17(b), a third party requester who has not filed a notice of appeal may file a notice of cross appeal with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent.

(c) The notice of appeal or cross appeal in an *inter partes* reexamination proceeding must identify the appealed claim(s) and must be signed by the patent owner, the third party requester, or their duly authorized attorney or agent.

(d) An appeal or cross appeal, when taken, must be taken from all the rejections of the claims in a Right of Appeal Notice which the patent owner proposes to contest or from all the determinations favorable to patentability, including any final determination not to make a proposed rejection, in a Right of Appeal Notice which a third party requester proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal is decided.

(e) The times for filing a notice of appeal or cross appeal may not be extended.

§ 1.961 Jurisdiction over appeal in *inter partes* reexamination.

Jurisdiction over the *inter partes* reexamination proceeding passes to the Board of Patent Appeals and Interferences upon transmittal of the file, including all briefs and examiner's answers, to the Board of Patent Appeals and Interferences. Prior to the entry of a decision on the appeal, the Commissioner may *sua sponte* order the *inter partes* reexamination proceeding remanded to the examiner for action consistent with the Commissioner's order.

§ 1.962 Appellant and respondent in *inter partes* reexamination defined.

For the purposes of *inter partes* reexamination, appellant is any party, whether the patent owner or a third party requester, filing a notice of appeal or cross appeal. If more than one party appeals or cross appeals, each appealing or cross appealing party is an appellant with respect to the claims to which his or her appeal or cross appeal is directed. A respondent is any third party requester responding under § 1.967 to the appellant's brief of the patent owner, or the patent owner responding under § 1.967 to the appellant's brief of any third party requester. No third party requester may be a respondent to the appellant brief of any other third party requester.

§ 1.963 Time for filing briefs in *inter partes* reexamination.

(a)An appellant's brief in an *inter partes* reexamination must be filed no later than two months from the latest filing date of the last-filed notice of appeal or cross appeal or, if any party to the *inter partes* reexamination is entitled to file an appeal or cross appeal but fails to timely do so, the expiration of time for filing (by the last party entitled to do so) such notice of appeal or cross appeal. The time for filing an appellant's brief may not be extended.

(b) Once an appellant's brief has been properly filed, any brief must be filed by respondent within one month from the date of service of the appellant's brief. The time for filing a respondent's brief may not be extended.

(c) The examiner will consider both the appellant's and respondent's briefs and may prepare an examiner's answer under § 1.969.

(d) Any appellant may file a rebuttal brief under § 1.971 within one month of the date of the examiner's answer. The time for filing a rebuttal brief may not be extended.

(e) No further submission will be considered and any such submission will be treated in accordance with § 1.939.

§ 1.965 Appellant's brief in *inter partes* reexamination.

(a)Appellant(s) may once, within time limits for filing set forth in § 1.963, file a brief in triplicate and serve the brief on all other parties to the *inter partes* reexamination proceeding in accordance with § 1.903. The brief must be signed by the appellant, or the appellant's duly authorized attorney or agent and must be accompanied by the requisite fee set forth in § 1.17(c). The brief must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

(b) A party's appeal shall stand dismissed upon failure of that party to file an appellant's brief, accompanied by the requisite fee, within the time allowed.

(c) The appellant's brief shall contain the following items under appropriate headings and in the order indicated below, unless the brief is filed by a party who is not represented by a registered practitioner. The brief may include an appendix containing only those portions of the record on which reliance has been made.

(1) *Real Party in Interest.* A statement identifying the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to the appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the decision of the Board of Patent Appeals and Interferences in the pending appeal.

(3) *Status of Claims.* A statement of the status of all the claims, pending or canceled. If the appellant is the patent owner, the appellant must also identify the rejected claims whose rejection is being appealed. If the appellant is a third party requester, the appellant must identify the claims that the examiner has made a determination favorable to patentability, which determination is being appealed.

(4) *Status of Amendments.* A statement of the status of any amendment filed subsequent to the close of prosecution.

(5) *Summary of Invention.* A concise explanation of the invention or subject matter defined in the claims involved in the appeal, which shall refer to the specification by column and line number, and to the drawing(s), if any, by reference characters.

(6) *Issues.* A concise statement of the issues presented for review. No new ground of rejection can be proposed by a third party requester appellant.

(7) *Grouping of Claims.* If the appellant is the patent owner, for each ground of rejection in the Right of Appeal Notice which appellant contests and which applies to a group of two or more claims, the Board of Patent Appeals and Interferences shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together; and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of this group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

(8) *Argument.* The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the bases therefor, with citations of the

authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate, numbered heading.

(i) For each rejection under 35 U.S.C. 112, first paragraph, or for each determination favorable to patentability, including a determination not to make a proposed rejection under 35 U.S.C. 112, first paragraph, which appellant contests, the argument shall specify the errors in the rejection or the determination and how the first paragraph of 35 U.S.C. 112 is complied with, if the appellant is the patent owner, or is not complied with, if the appellant is a third party requester, including, as appropriate, how the specification and drawing(s), if any,

(A) Describe, if the appellant is the patent owner, or fail to describe, if the appellant is a third party requester, the subject matter defined by each of the appealed claims; and

(B) Enable, if the appellant is the patent owner, or fail to enable, if the appellant is a third party requester, any person skilled in the art to make and use the subject matter defined by each of the appealed claims.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, or for each determination favorable to patentability including a determination not to make a proposed rejection under 35 U.S.C. 112, second paragraph, which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or the determination, if the appellant is a third party requester, and how the claims do, if the appellant is the patent owner, or do not, if the appellant is a third party requester, particularly point out and distinctly claim the subject matter which the inventor regards as the invention.

(iii) For each rejection under 35 U.S.C. 102 or for each determination favorable to patentability including a determination not to make a proposed rejection under 35 U.S.C. 102 which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or determination, if the appellant is a third party requester, and why the appealed claims are, if the appellant is the patent owner, or are not, if the appellant is a third party requester, patentable under 35 U.S.C. 102, including any specific limitations in the appealed claims which are or are not described in the prior art.

(iv) For each rejection under 35 U.S.C. 103 or for each determination favorable to patentability, including a determination not to make a proposed rejection under 35 U.S.C. 103 which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or determination, if the appellant is a third party requester. If appropriate, also state the specific limitations in the appealed claims which are or are not described in the prior art and explain how such limitations render the claimed subject matter obvious, if the appellant is a third party requester, or unobvious, if the appellant is the patent owner, over the prior art. If the rejection or determination is based upon a combination of references, the argument shall explain why the references, taken as a whole, do or do not suggest the claimed subject matter. The argument should include, as may be appropriate, an explanation of why features disclosed in one reference may or may not properly be combined with features disclosed in another reference. A general argument that all the limitations are or are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section or for each determination favorable to patentability, including any determination not to make a proposed rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or determination, if the appellant is a third party requester, and the specific limitations in the appealed claims, if appropriate, or other reasons, which cause the rejection or determination to be in error.

(9) *Appendix.* An appendix containing a copy of the claims appealed by the appellant.

(10) *Certificate of Service.* A certification that a copy of the brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, that appellant's appeal will stand dismissed.

§ 1.967 Respondent's brief in *inter partes* reexamination.

(a) Respondent(s) in an *inter partes* reexamination appeal may once, within the time limit for filing set forth in § 1.963, file a respondent brief in triplicate and serve the brief on all parties in accordance with § 1.903. The brief must be signed by the party, or the party's duly authorized attorney or agent, and must be accompanied by the requisite fee set forth in § 1.17(c). The brief must state the authorities and arguments on which respondent will rely. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown. The respondent brief shall be limited to issues raised in the appellant brief to which the respondent brief is directed. A third party respondent brief may not address any brief of any other third party.

(b) The respondent brief shall contain the following items under appropriate headings and in the order here indicated, and may include an appendix containing only those portions of the record on which reliance has been made.

(1) *Real Party in Interest.* A statement identifying the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to the respondent, the respondent's legal representative, or assignee (if any) which will directly affect or be directly affected by or have a bearing on the decision of the Board of Patent Appeals and Interferences in the pending appeal.

(3) *Status of claims.* A statement accepting or disputing appellant's statement of the status of claims. If appellant's statement of the status of claims is disputed, the errors in appellant's statement must be specified with particularity.

(4) *Status of amendments.* A statement accepting or disputing appellant's statement of the status of amendments. If appellant's statement of the status of amendments is disputed, the errors in appellant's statement must be specified with particularity.

(5) *Summary of invention.* A statement accepting or disputing appellant's summary of the invention or subject matter defined in the claims involved in the appeal. If appellant's summary of the invention or subject matter defined in the claims involved in the appeal is disputed, the errors in appellant's summary must be specified.

(6) *Issues.* A statement accepting or disputing appellant's statement of the issues presented for review. If

appellant's statement of the issues presented for review is disputed, the errors in appellant's statement must be specified. A counter statement of the issues for review may be made. No new ground of rejection can be proposed by a third party requester respondent.

(7) *Argument.* A statement accepting or disputing the contentions of the appellant with each of the issues. If a contention of the appellant is disputed, the errors in appellant's argument must be specified, stating the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading. An argument may be made with each of the issues stated in the counter statement of the issues, with each counter-stated issue being treated under a separate heading. The provisions of § 1.965 (c)(8)(iii) and (iv) of these regulations shall apply to any argument raised under 35 U.S.C. 102 or sec. 103.

(8) *Certificate of Service.* A certification that a copy of the respondent brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(c) If a respondent brief is filed which does not comply with all the requirements of paragraph (b) of this section, respondent will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the respondent does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the respondent brief will not be considered.

§ 1.969 Examiner's answer in *inter partes* reexamination.

(a) The primary examiner in an *inter partes* reexamination appeal may, within such time as directed by the Commissioner, furnish a written statement in answer to the patent owner's and/or third party requester's appellant brief or respondent brief including, as may be necessary, such explanation of the invention claimed and of the references, the grounds of rejection, and the reasons for patentability, including grounds for not adopting a proposed rejection. A copy of the answer shall be supplied to all parties to the reexamination proceeding. If the primary examiner finds that the appeal is not regular in form or does not relate to an appealable action, he or she shall so state.

(b) An examiner's answer may not include a new ground of rejection.

(c) An examiner's answer may not include a new determination not to make a proposed rejection of a claim.

(d) Any new ground of rejection, or any new determination not to make a proposed rejection, must be made in an Office action reopening prosecution.

§ 1.971 Rebuttal brief in *inter partes* reexamination.

Within one month of the examiner's answer in an *inter partes* reexamination appeal, any appellant may once file a rebuttal brief in triplicate. The rebuttal brief of the patent owner may be directed to the examiner's answer and/or any respondent brief. The rebuttal brief of any third party requester may be directed to the examiner's answer and/or the respondent brief of the patent owner. The rebuttal brief of a third party requester may not be directed to the respondent brief of any other third party requester. No new ground of rejection can be proposed by a third party requester. The time for filing a rebuttal brief may not be extended. The rebuttal brief must include a certification that a copy of the rebuttal brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

§ 1.973 Oral hearing in *inter partes* reexamination.

(a) An oral hearing in an *inter partes* reexamination appeal should be requested only in those circumstances in which an appellant or a respondent considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Patent Appeals and Interferences as an appeal decided after oral hearing.

(b) If an appellant or a respondent desires an oral hearing, he or she must file a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months after the date of the examiner's answer. The time for requesting an oral hearing may not be extended.

(c) An oral argument may be presented at oral hearing by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board of Patent Appeals and Interferences.

(d) If an appellant or a respondent has requested an oral hearing and has submitted the fee set forth in § 1.17(d), a hearing date will be set, and notice given to all parties to the reexamination proceeding, as well as the primary examiner. The notice shall set a non-extendable period within which all requests for oral hearing shall be submitted by any other party to the appeal desiring to participate in the oral hearing. A hearing will be held as stated in the notice, and oral argument will be limited to thirty minutes for each appellant and respondent who has requested an oral hearing, and twenty minutes for the primary examiner unless otherwise ordered before the hearing begins. No appellant or respondent will be permitted to participate in an oral hearing unless he or she has requested an oral hearing and submitted the fee set forth in § 1.17(d).

(e) If no request and fee for oral hearing have been timely filed by an appellant or a respondent, the appeal will be assigned for consideration and decision on the written record.

§ 1.975 Affidavits or declarations after appeal in *inter partes* reexamination.

Affidavits, declarations, or exhibits submitted after the *inter partes* reexamination has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.

§ 1.977 Decision by the Board of Patent Appeals and Interferences; remand to examiner in *inter partes* reexamination.

(a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse each decision of the examiner on all issues raised on each appealed claim, or remand the reexamination proceeding to the examiner for further consideration. The reversal of the examiner's determination not to make a rejection proposed by the third party requester constitutes a decision adverse to the patentability of the claims which are subject to that proposed rejection which will be set forth in the decision of the Board of Patent Appeals and Interferences as a new ground of rejection under paragraph (b) of this section. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board of Patent Appeals and Interferences have knowledge of any grounds not raised in the appeal for rejecting any pending claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall constitute a new ground of rejection of the claim. A decision which includes a new ground of rejection shall not be considered final for purposes of judicial review. When the Board of Patent

Appeals and Interferences makes a new ground of rejection, the patent owner, within one month from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal proceeding as to the rejected claim:

(1) The patent owner may submit an appropriate amendment of the claim so rejected or a showing of facts relating to the claim, or both.

(2) The patent owner may file a request for rehearing of the decision of the Board of Patent Appeals and Interferences under § 1.979(a).

(c) Where the patent owner has responded under paragraph (b)(1) of this section, any third party requester, within one month of the date of service of the patent owner response, may once file comments on the response. Such written comments must be limited to the issues raised by the decision of the Board of Patent Appeals and Interferences and the patent owner's response. Any third party requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under § 1.17(b) and (c), respectively, which must accompany the comments or reply.

(d) Following any response by the patent owner under paragraph (b)(1) of this section and any written comments from a third party requester under paragraph (c) of this section, the reexamination proceeding will be remanded to the examiner. The statement of the Board of Patent Appeals and Interferences shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground of rejection. The examiner will consider any response under paragraph (b)(1) of this section and any written comments by a third party requester under paragraph (c) of this section and issue a determination that the rejection should be maintained or has been overcome.

(e) Within one month of the examiner's determination pursuant to paragraph (d) of this section, the patent owner or any third party requester may once submit comments in response to the examiner's determination. Within one month of the date of service of comments in response to the examiner's determination, any party may file a reply to the comments. No third party requester reply may address the comments of any other third party requester reply. Any third party requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under § 1.17(b) and (c), respectively, which must accompany the comments or reply.

(f) After submission of any comments and any reply pursuant to paragraph (e) of this section, or after time has expired, the reexamination proceeding will be returned to the Board of Patent Appeals and Interferences which shall reconsider the matter and issue a new decision. The new decision will incorporate the earlier decision, except for those portions specifically withdrawn.

(g) The time period set forth in paragraph (b) of this section is subject to the extension of time provisions of § 1.956. The time periods set forth in paragraphs (c) and (e) of this section may not be extended.

§ 1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in *inter partes* reexamination.

(a) Parties to the appeal may file a request for rehearing of the decision within one month of the date of:

(1) The original decision of the Board of Patent Appeals and Interferences under § 1.977(a),

(2) The original § 1.977(b) decision under the provisions of § 1.977(b)(2),

(3) The expiration of the time for the patent owner to take action under § 1.977(b)(2), or

(4) The new decision of the Board of Patent Appeals and Interferences under § 1.977(f).

(b) Within one month of the date of service of any request for rehearing under paragraph (a) of this section, or any further request for rehearing under paragraph (c) of this section, any party to the appeal may once file comments in opposition to the request for rehearing or the further request for rehearing. The comments in opposition must be limited to the issues raised in the request for rehearing or the further request for rehearing.

(c) If a party to an appeal files a request for rehearing under paragraph (a) of this section, or a further request for rehearing under this section, the Board of Patent Appeals and Interferences will issue a decision on rehearing. This decision is deemed to incorporate the earlier decision, except for those portions specifically withdrawn. If the decision on rehearing becomes, in effect, a new decision, and the Board of Patent Appeals and Interferences so states, then any party to the appeal may, within one month of the new decision, file a further request for rehearing of the new decision under this subsection.

(d) Any request for rehearing shall state the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which rehearing is sought.

(e) The patent owner may not appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983 until all parties' rights to request rehearing have been exhausted, at which time the decision of the Board of Patent Appeals and Interferences is final and appealable by the patent owner.

(f) An appeal by a third party requester is considered terminated by the dismissal of the third party requester's appeal, the failure of the third party requester to timely request rehearing under § 1.979(a) or (c), or a final decision under § 1.979(e). The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the decision of the Board of Patent Appeals and Interferences is final. An appeal by the patent owner is considered terminated by the dismissal of the patent owner's appeal, the failure of the patent owner to timely request rehearing under § 1.979(a) or (c), or the failure of the patent owner to timely file an appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983. The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the date on which the time for the patent owner's appeal to the U.S. Court of Appeals for the Federal Circuit expires. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, the patent owner's appeal is considered terminated when the mandate is received by the Office. Upon termination of an appeal, if no other appeal is present, the reexamination proceeding will be terminated and the Commissioner will issue a certificate under § 1.997.

(g) The times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (c) of this section, and for submitting comments under paragraph (b) of this section may not be extended.

§ 1.981 Reopening after decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination.

Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.977 without the written authority of the Commissioner, and then only for the

consideration of matters not already adjudicated, sufficient cause being shown.

Patent Owner Appeal to the United States Court of Appeals for the Federal Circuit in *Inter Partes* Reexamination

§ 1.983 Patent owner appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination.

(a) The patent owner in a reexamination proceeding who is dissatisfied with the decision of the Board of Patent Appeals and Interferences may, subject to § 1.979(e), appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal:

(1) In the U. S. Patent and Trademark Office, file a timely written notice of appeal directed to the Commissioner in accordance with §§ 1.302 and 1.304; and

(2) In the Court, file a copy of the notice of appeal and pay the fee, as provided for in the rules of the Court.

Concurrent Proceedings Involving Same Patent in *Inter Partes* Reexamination

§ 1.985 Notification of prior or concurrent proceedings in *inter partes* reexamination.

(a) In any *inter partes* reexamination proceeding, the patent owner shall call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved, including but not limited to interference, reissue, reexamination, or litigation and the results of such proceedings.

(b) Notwithstanding any provision of the rules, any person at any time may file a paper in an *inter partes* reexamination proceeding notifying the Office of a prior or concurrent proceedings in which the same patent is or was involved, including but not limited to interference, reissue, reexamination, or litigation and the results of such proceedings. Such paper must be limited to merely providing notice of the other proceeding without discussion of issues of the current *inter partes* reexamination proceeding. Any paper not so limited will be returned to the sender.

§ 1.987 Suspension of *inter partes* reexamination proceeding due to litigation.

If a patent in the process of *inter partes* reexamination is or becomes involved in litigation, the Commissioner shall determine whether or not to suspend the *inter partes* reexamination proceeding.

§ 1.989 Merger of concurrent reexamination proceedings.

(a) If any reexamination is ordered while a prior *inter partes* reexamination proceeding is pending for the same patent and prosecution in the prior *inter partes* reexamination proceeding has not been terminated, a decision may be made to merge the two proceedings or to suspend one of the two proceedings. Where merger is ordered, the merged examination will normally result in the issuance of a single reexamination certificate under § 1.997.

(b) An *inter partes* reexamination proceeding filed under § 1.913 which is merged with an *ex parte* reexamination proceeding filed under § 1.510 will result in the merged proceeding being governed by §§ 1.902 through 1.997, except that the rights of any third party requester of the *ex parte* reexamination shall be governed by §§ 1.510 through 1.560.

§ 1.991 Merger of concurrent reissue application and *inter partes* reexamination proceeding.

If a reissue application and an *inter partes* reexamination proceeding on which an order pursuant to § 1.931 has been mailed are pending concurrently on a patent, a decision may be made to merge the two proceedings or to suspend one of the two proceedings. Where merger of a reissue application and an *inter partes* reexamination proceeding is ordered, the merged proceeding will be conducted in accordance with §§ 1.171 through 1.179, and the patent owner will be required to place and maintain the same claims in the reissue application and the *inter partes* reexamination proceeding during the pendency of the merged proceeding. In a merged proceeding the third party requester may participate to the extent provided under §§ 1.902 through 1.997, except that such participation shall be limited to issues within the scope of *inter partes* reexamination. The examiner's actions and any responses by the patent owner or third party requester in a merged proceeding will apply to both the reissue application and the *inter partes* reexamination proceeding and be physically entered into both files. Any *inter partes* reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent.

§ 1.993 Suspension of concurrent interference and *inter partes* reexamination proceeding.

If a patent in the process of *inter partes* reexamination is or becomes involved in an interference, the Commissioner may suspend the *inter partes* reexamination or the interference. The Commissioner will not consider a request to suspend an interference unless a motion under § 1.635 to suspend the interference has been presented to, and denied by, an administrative patent judge and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set.

§ 1.995 Third party requester's participation rights preserved in merged proceeding.

When a third party requester is involved in one or more proceedings, including an *inter partes* reexamination proceeding, the merger of such proceedings will be accomplished so as to preserve the third party requester's right to participate to the extent specifically provided for in these regulations. In merged proceedings involving different requesters, any paper filed by one party in the merged proceeding shall be served on all other parties of the merged proceeding.

Reexamination Certificate in *Inter Partes* Reexamination

§ 1.997 Issuance of *inter partes* reexamination certificate.

(a) Upon the conclusion of an *inter partes* reexamination proceeding, the Commissioner will issue a certificate in accordance with 35 U.S.C. 316 setting forth the results of the *inter partes* reexamination proceeding and the content of the patent following the *inter partes* reexamination proceeding.

(b) A certificate will be issued in each patent in which an *inter partes* reexamination proceeding has been ordered under § 1.931. Any statutory disclaimer filed by the patent owner will be made part of the certificate.

(c) The certificate will be sent to the patent owner at the address as provided for in § 1.33(c). A copy of the certificate will also be sent to the third party requester of the *inter partes* reexamination proceeding.

(d) If a certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with that patent or any reissue applications or any reexamination requests relating thereto.

(e) If the *inter partes* reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.991, the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 316.

(f) A notice of the issuance of each certificate under this section will be published in the *Official Gazette.*

Dated: November 21, 2000.

Q. Todd Dickinson,

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

[FR Doc. 00–30425 Filed 12–6–00; 8:45 am]

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December 7, 2000

Part IV

Environmental Protection Agency

Control of Emissions From New Nonroad Spark-Ignition Engines Rated Above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines; Notice

40 CFR Parts 86, et al.

Control of Emissions From Nonroad Large Spark Ignition Engines, Recreational Engines (Marine and Land-Based), and Highway Motorcycles; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6907–5]

RIN 2060–AI11

Control of Emissions From New Nonroad Spark-Ignition Engines Rated Above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final finding.

SUMMARY: We find that land-based nonroad spark-ignition (SI) engines rated above 19 kilowatts (kW), as well as all land-based recreational nonroad spark-ignition engines, cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area. We also find that particulate matter (PM) emissions from these engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. This finding does not address marine propulsion engines.

DATES: This finding becomes effective February 5, 2001.

ADDRESSES: Materials related to this action are contained in Public Docket A–98–01, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Anyone may inspect the docket from 8:00 a.m. until 5:30 p.m., Monday through Friday. You can reach the Air Docket by telephone at (202) 260–7548, and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: John Mueller, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4275; FAX: (734) 214–4050; E-mail: mueller.john@epa.gov.

SUPPLEMENTARY INFORMATION:

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Introduction

We have established emission standards for several nonroad engine categories. The categories of nonroad engines for which standards currently exist cover a variety of applications, including farm and construction equipment, marine vessels, locomotives, and lawn and garden equipment. We have established standards for SI engines rated at or below 19 kW. These emission standards target lawn and garden engines and generally do not apply to engines used in recreational vehicles such as off-road motorcycles, ''all terrain'' vehicles (ATVs) and snowmobiles.

In contrast, nonroad spark-ignition engines (used in nonrecreational applications such as forklifts and airport ground service equipment) rated above 19 kW (25 hp) and all spark-ignition engines used in land-based recreational applications (off-road motorcycles, ''all terrain'' vehicles (ATVs) and snowmobiles) are not currently subject to federal emission standards.[1] With this finding, we are beginning the process leading to proposal of emission standards for these engines by finding that emissions of HC, NO_X, and CO from these engines and vehicles, as a group, cause or contribute to ozone or CO concentrations in more than one ozone or CO nonattainment area, and emissions of PM from these engines and vehicles cause or contribute to air pollution that we have previously determined may reasonably be anticipated to endanger public health or welfare. These findings are appropriate whether we include all large nonroad SI in one category or whether we examine emissions from nonrecreational nonroad spark-ignition engines above 19 kW and emissions from recreational vehicles separately.

[1] For the purposes of this document, all references to spark-ignition engines rated above 19 kW include marine auxiliary engines, but exclude marine propulsion engines. Most engines used in recreational applications were explicitly excluded from the rule promulgating emission standards for engines rated at or below 19 kW.

I. Statutory Authority

Section 213(a)(1) of the Clean Air Act, 42 U.S.C. 7547(a), requires that we study the emissions from all categories of nonroad engines and equipment (other than locomotives) to determine, among other things, whether these emissions ''cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health and welfare.'' Section 213(a)(2) further requires us to determine, through notice and comment, whether the emissions of carbon monoxide (CO), volatile organic compounds (VOCs), and oxides of nitrogen (NO_X) found in the above study significantly contributes to ozone or CO concentrations in more than one ozone or CO nonattainment area. With such a determination of significance, section 213(a)(3) requires us to establish emission standards for classes or categories of new nonroad engines and vehicles that cause or contribute to such air pollution. Thus, the finding is really a two step process. The first step, as required under section 213(a)(2), requires us to determine whether the emissions from all nonroad mobile sources contribute significantly to ozone or CO nonattainment. The second step, and the one with which this notice is concerned, requires us, under section 213(a)(3), to look at specific classes or categories of new nonroad vehicles and engines in order to identify those classes or categories that contribute to such air pollution. Moreover, if we determine that emissions from all new nonroad engines contribute significantly to any other type of air pollution, we may promulgate emission standards under section 213(a)(4) regulating emissions from classes or categories of new nonroad engines that we find contribute to such air pollution. This process, which in this final finding concerns PM emissions, is a separate process from that contained in sections 213(a)(2) and (3) regarding ozone and CO nonattainment.

As directed by the Clean Air Act, we conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991.[2] Based on the results of that study, referred to as the Nonroad Engine and Vehicle Emission Study (NEVES), we determined that emissions of NO_X, HC, and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306,

[2] ''Nonroad Engine and Vehicle Emission Study—Report and Appendices,'' EPA–21A–201, November 1991 (available in Air docket A–96–40).

June 17, 1994).[3] Given this determination, section 213(a)(3) of the Act requires us to promulgate emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We are finding in this document that nonroad SI engines rated above 19 kW and all land-based recreational nonroad SI vehicles ''cause or contribute'' to such air pollution.

Where we determine that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes us to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that we determine cause or contribute to such air pollution, taking into account cost, noise, safety and energy factors associated with the application of technology used to meet the standards. We have made this determination for emissions of particulate matter (PM) and smoke from nonroad engines (see 59 FR 31306, June 17, 1994). In that rulemaking, we found that smoke emissions from nonroad engines significantly contribute to such air pollution based on smoke's relationship to the particulate matter that makes up smoke as well as smoke's effect on visibility and soiling of urban buildings and other property. Particulate matter can be inhaled into the lower lung cavity, posing a potential health threat. We cited recent studies associating PM with increased mortality.[4] We also promulgated standards for emissions of PM and smoke from land-based nonroad diesel engines in that rulemaking. With this document, we are finding that emissions of PM from nonroad SI engines rated above 19 kW and all land-based recreational nonroad SI engines ''cause or contribute'' to such air pollution.

II. Background

We previously published a Notice of Proposed Finding regarding emissions from nonroad spark-ignition (SI) engines (Large SI engines) rated above 19 kilowatts, as well as all land-based recreational nonroad spark-ignition engines.[5] In that notice we proposed to find that emissions from these engines cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide nonattainment area. We also proposed to find that PM emissions from those engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In today's notice we are finalizing those proposed findings.

As was previously discussed, the term ''nonroad'' encompasses a broad range of engines and equipment. In implementing the requirements of section 213(a) for nonroad engines and equipment we divided the nonroad realm into several major categories. These categories include land-based compression ignition (CI) engines (*e.g.*, farm and construction equipment), small land-based spark-ignition (SI) engines (*e.g.*, lawn and garden equipment, string trimmers), marine engines (including CI and SI, propulsion and auxiliary, commercial and recreational), locomotives, and large land-based SI engines, including engines used in nonrecreational equipment (*e.g.*, forklifts, airport ground service equipment) and engines used in recreational vehicles (off-road motorcycles, ''all terrain'' vehicles (ATVs) and snowmobiles).

The Clean Air Act itself does not provide a definition or specific guidance on how to define specific ''classes or categories of new nonroad engines, vehicles, and equipment'' for purposes of determining whether such classes or categories cause or contribute to pollution in nonattainment areas. Thus, as we divided the nonroad realm into separate categories for the purposes of regulation we had discretion to define the classes or categories as we believed appropriate, in a manner that reasonably furthers the purposes of section 213(a). The legislative history of the Act, however, provides some instruction that we should not subdivide categories into small subcategories. Information from the Senate Report indicates that Congress did not want us to subdivide source categories into such small divisions that no subcategory by itself would contribute significantly, despite the fact that nonroad engines as a whole contribute significantly to pollution.[6] The final version of the Act, in fact, does not require a finding of ''significant contribution,'' but merely ''contribution,'' for individual categories of nonroad engines. In general, we chose to group engines and equipment together based on common characteristics such as combustion cycle, fuel, usage patterns, power rating, and equipment type. By dividing nonroad engines and equipment into separate categories based on these characteristics we are able to devise the most appropriate regulatory programs for each category which take into account the specific characteristics of the engines and equipment, as well as the unique traits and needs of the affected vehicle and equipment manufacturing industries and the end users of the vehicles and equipment. In addition, it avoids the danger recognized in the legislative history of dividing nonroad engines into so many small categories that none would contribute meaningfully to air pollution.

The approach to categorizing nonroad engines and equipment just discussed has worked well from the perspective of regulatory program development. As can be seen from Tables 1 and 2, nonroad emissions inventories as a whole are significant. Currently, nonroad inventories of HC, CO and NO_X are from one-third to one-half of the total mobile source inventories. Nonroad inventories of PM are roughly two-thirds of the total mobile source PM inventory. In addition, each of the classes and categories of nonroad engines has been shown to contribute to ozone and CO pollution in more than one nonattainment area.

Manufacturers and users of snowmobiles provided comments in this rulemaking indicating that snowmobiles should not be regulated for ozone precursors because snowmobiles are used during cold weather, when ozone is less of a health concern. Snowmobiles are not a separate category of nonroad engines, but are part of a broader category that clearly contributes to ozone concentrations in more than one nonattainment area. Moreover, even reviewing snowmobile emissions by themselves, they emit substantial amounts of HC in several nonattainment areas, which would increase ozone levels in those areas. However, we recognize that contribution to ozone concentrations is less important if it occurs during portions of the year when exceedances of the ozone NAAQS are unlikely to occur. We will bear this issue in mind as we move forward with a proposed and final rule to address the larger category of large non-road SI engines.

In the Advance Notice of Proposed Rulemaking (ANPRM), published elsewhere in this issue of the **Federal Register**, which accompanies this Final Finding, we specifically request

[3] The terms HC (hydrocarbon) and VOC (volatile organic carbon) refer to similar sets of chemicals and are generally used interchangeably.

[4] The nonroad study (NEVES) found that nonroad sources are responsible for approximately 5.55% of the total anthropogenic inventory of PM emissions and over one percent of total PM emissions in six to ten of the thirteen nonattainment areas surveyed.

[5] 64 FR 6008, February 8, 1999.

[6] Senate Report 101–228, pp. 104–105.

comment on whether we should distinguish snowmobiles from other recreational vehicles in regulating ozone precursors. Based in part on the comments we receive on the ANPRM, we intend to evaluate further the extent to which emissions of ozone precursors (*e.g.,* HCs) from snowmobiles contribute to ozone non-attainment. However, CAA section 213 allows us to regulate emissions from nonroad engines that cause or contribute to other air pollution in addition to ozone. As discussed in the ANPRM, these engines emit high levels of HCs, which contain hazardous air pollutants and can increase indirect PM emissions. Unburned HCs are also emitted as direct particulate matter. We have requested comment in the ANPRM on personal exposure issues as well as nonattainment and plan to consider this further as we develop our proposed rule.

III. Emission Modeling

A. National Inventories

For this finding we used the latest version of our NONROAD emissions model, which computes nationwide, state and county emission levels for a wide variety of nonroad engines. The model incorporates information on emission rates, operating data, and population to determine annual emission levels of various pollutants. Population and operating data, including load factor and operating rate, are determined separately for dozens of different applications. Load factor refers to the degree to which an engine's rated power is, on average, utilized, with full-power operation indicated by a load factor of 1.0. In addition to gasoline, Large SI engines can operate on liquefied petroleum gas (LPG) or compressed natural gas (CNG). EPA memoranda describe the detailed inputs and methodology for this modeling.[7]

We made changes from the proposed finding in the national inventories for nonrecreational Large SI engines and all engines used in land-based recreational vehicles. For the Large SI engines we revised our HC and CO emission factors (per-engine emission rates) to include an adjustment for transient operation which is common in the equipment using these engines. This has resulted in an increase in our projected inventories for these engines. The load factors, annual usage rates and vehicle populations for recreational vehicles were revised in response to new information provided to us in the public comments, as well as additional information we gathered. We also updated our emission factors for 4-stroke off-road motorcycles based on available emission testing data. These recreational vehicle changes, and the reasons for them, are documented in an EPA memorandum in the docket for this finding.[8] These modeling input changes have resulted in lower inventory estimates for snowmobiles and higher inventory estimates for off-road motorcycles and ATVs than those in our proposed finding. In another change to the land-based recreational vehicle modeling, for the purposes of emissions modeling for this finding we have limited the category to just off-road motorcycles, ATVs and snowmobiles, eliminating such sources as mopeds and go-carts, as well as golf carts and other specialty vehicles. This is because the vehicles we eliminated from the recreational category are already either currently covered under existing regulations or would be more appropriately categorized as nonrecreational large SI engines. For example, engines typically used in go-carts and golf carts are currently regulated under our provisions for small land-based SI engines. Mopeds are on-highway vehicles and, while not generally regulated under our on-highway provisions due to their small engine size, are typically licensed for operation on roads and not used in the same manner as off-road motorcycles. Therefore, mopeds are not properly considered nonroad emission sources. Finally, ''specialty vehicles,'' which includes such sources as ice resurfacing machines and industrial carts, are more appropriately considered a subset of nonrecreational large SI engines and have been placed there for purposes of emissions inventory estimation. Removing these vehicles from the recreational group also resulted in a reduction in the recreational vehicle inventories compared to those in the proposed finding. Despite these changes to the emissions inventories, the inventory data support our finding that these vehicles and engines contribute to air pollution.

Emission inventory estimates for the years 2000 and 2007 are summarized in Tables 1 and 2.[9] These tables show relative contributions of the different mobile source categories to the overall emissions mobile source inventory. Of the total emissions from mobile sources, nonroad SI engines rated above 19 kW contribute 2 percent, 2 percent, 3 percent, and 0.2 percent of HC, NO_X, CO, and PM emissions in the year 2000. The results for land-based recreational engines reflect the impact of the significantly different emissions characteristics of two-stroke engines. These engines are estimated to contribute 8 percent of mobile source HC emissions, 5 percent of CO emissions, and 0.2 percent of NO_X emissions. PM emissions from land-based recreational engines amount to 0.8 percent of total mobile source emissions. Since highway engines account for a large fraction of mobile source emissions, as shown in Tables 1 and 2, the contribution of these engines as a percentage of total nonroad emissions will be significantly higher than that from total mobile sources emissions.

These emission figures are projected to change somewhat by 2007. Population growth and the effects of other regulatory control programs are factored into these later emissions estimates. Table 2 shows that the relative importance of uncontrolled engines grows over time as other engines reduce their emission levels. The effectiveness of all control programs is offset by the anticipated growth in engine populations. Further information regarding these emissions estimates, including modeling assumptions, can be found in the docket memo referenced in footnote 9.

[7] ''Emission Modeling for Recreational Vehicles,'' EPA memorandum from Linc Wehrly to docket A–98–01, November 14, 2000, and ''Updated Emission Modeling for Large SI Engines,'' EPA memorandum from Alan Stout to docket A–98–01, November 10, 2000.

[8] ''Emission Modeling for Recreational Vehicles,'' EPA memorandum from Linc Wehrly to docket A–98–01, November 14, 2000.

[9] Further information is provided in ''Emission Modeling for Recreational Vehicles,'' EPA memorandum from Linc Wehrly to docket A–98–01, November 14, 2000.

TABLE 1.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2000

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for sources in finding	327	2	712	10	6,525	8	7.2	1.0
Nonrecreational nonroad SI > 19 kW[a]	306	2	125	2	2,294	3	1.6	0.2
Recreational SI[a]	21.3	0.16	587	8	4,231	5	5.6	0.8
Nonroad SI < 19 kW	106	0.8	1,460	20	18,359	23	50	7
Marine SI	32	0.2	928	12	2,144	3	38	5
Nonroad CI	2,625	20	316	4	1,217	2	253	36
Marine CI	1,001	7	31	0	133	0.2	42	6
Locomotive	1,192	9	47	1	119	0.2	30	4
Aircraft	178	1	183	2	1,017	1	39	6
Total Nonroad	5,461	41	3,677	49	29,514	37	459	66
Total Highway	7,988	59	3,772	51	49,701	63	240	34
Total Mobile Sources	13,449	100	7,449	100	79,215	100	699	100
Total Man-Made Sources	24,553	.....	18,395	.....	101,294	.....	3,095	.....
Mobile Source percent of Total Man-Made Sources	55	.....	40	.....	78	.....	23	.....

[a] Sources covered by finding.

TABLE 2.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2007

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for sources in finding	391	4	757	14	6,962	9	7.8	1.3
Nonrecreational nonroad SI > 19 kW[a]	369	4	141	3	2,517	3	1.9	0.3
Recreational SI[a]	22.4	0.22	616	12	4,445	6	5.9	0.9
Nonroad SI < 19 kW	96	0.9	933	18	21,406	28	58	9
Marine SI	42	0.4	733	14	2,056	3	33	5
Nonroad CI	2,253	22	214	4	1,128	1	226	36
Marine CI	1,018	10	33	1	142	0.2	44	7
Locomotive	773	8	43	1	119	0.2	27	4
Aircraft	200	2	205	4	1,200	2	41	7
Total Nonroad	4,773	46	2,918	56	33,013	43	437	70
Total Highway	5,529	54	2,317	44	44,276	57	186	30
Total Mobile Sources	10,302	100	5,235	100	77,289	100	623	100
Total Man-Made Sources	20,290	.....	15,359	.....	100,805	.....	2,971	.....
Mobile Source percent of Total Man-Made Sources	51	.....	34	.....	77	.....	21	.....

[a] Sources covered by finding.

B. Nonattainment Areas

We used our NONROAD model to show that nonrecreational nonroad spark-ignition engines over 19 kW and recreational SI engines contribute to air pollution in nonattainment areas. There are currently 31 ozone nonattainment areas, 17 CO nonattainment areas, and 76 PM nonattainment areas. Table 3 lists eight areas for which we present emission modeling estimates for the year 2000. While we believe these sources contribute to air pollution in all nonattainment areas, we chose these eight areas to explore how land-based Large SI and recreational vehicles and engines contribute to pollution in a cross section of nonattainment areas. (1) Phoenix, Arizona is a nonattainment area for both ozone (serious) and CO (serious). The nonattainment area consists only of Maricopa County. (2) El Paso, Texas is a nonattainment area for both ozone (serious) and CO (moderate). The nonattainment area consists only of El Paso County. (3) All eight counties in Connecticut constitute a single nonattainment area for ozone (serious). The modeling estimates show statewide emission levels in Connecticut. (4) In New Jersey, 18 of 21 counties are part of the nonattainment areas for New York City (severe for ozone, moderate for CO) or Philadelphia (severe for ozone). The modeling estimates show statewide emission levels in New Jersey. (5) Fairbanks, Alaska is a nonattainment area for CO (serious). (6) Spokane, Washington is a nonattainment area for CO (serious). (7) The Denver, Colorado area is a nonattainment area for CO (serious). (8) The six county Milwaukee, Wisconsin area is a nonattainment area for ozone (severe).

TABLE 3.—EMISSION LEVELS OF NONROAD NONRECREATIONAL SI ENGINES >19KW AND RECREATIONAL SI ENGINES IN SELECTED NONATTAINMENT AREAS (SHORT TONS) IN 2000

Area and application	CO	NO_X	HC	PM
Maricopa County, Arizona:				
Large SI	25,244	2,637	1,267	14
Recreational	13,304	72	1,426	3
Total	38,548	2,708	2,693	17
El Paso County, Texas:				
Large SI	4,229	664	240	3
Recreational	4,309	23	418	1
Total	8,538	688	659	4
Connecticut:				
Large SI	31,465	4,483	1,726	23
Recreational	24,031	129	2,394	5
Total	55,496	4,612	4,120	27
New Jersey:				
Large SI	65,601	8,964	3,563	46
Recreational	56,251	304	5,886	11
Total	121,852	9,267	9,450	57
Fairbanks, AK:				
Large SI	116	12	6	0
Recreational	2,511	13	329	3
Total	2,626	25	335	3
Spokane County, WA:				
Large SI	2,736	357	148	2
Recreational	5,012	25	706	6
Total	7,749	382	854	8
Denver County, CO:				
Large SI	4,988	649	267	3
Recreational	1,060	5	168	2
Total	6,047	654	435	5
Milwaukee, WI:				
Large SI	21,816	3,295	1,218	16
Recreational	12,802	53	3,168	55
Total	34,618	3,348	4,386	71

Additionally, the California Air Resources Board has published emission modeling estimates for nonroad spark-ignition engines. They specifically project that nonroad spark-ignition engines over 19 kW (25 hp) preempted from state regulation will contribute four tons of $HC + NO_X$ emissions per day in the South Coast Air Basin in 2010 (relative to two tons per day with federal emission regulations anticipated by California).[10] This includes farm and construction equipment such as chippers, balers, industrial saws, and welders. California's State Implementation Plan for the South Coast, Sacramento, Ventura, and Southeast Desert areas assumes federal regulation of these engines as part of their strategy to attain the ozone air quality standards. This four tons $HC + NO_X$ per day projection is relative to California's projection of 14 tons $HC + NO_X$ per day for non-preempted equipment in the South Coast Air Basin in 2010.

IV. Conclusion

Based on the national and local inventory numbers described in this document, and the information contained in the docket for this finding, we find that emissions of HC, NO_X, and CO from nonroad spark-ignition engines rated above 19 kW and from nonroad land-based spark-ignition recreational engines contribute to ozone or carbon monoxide concentrations in more than one ozone or CO nonattainment area, and emissions of PM from such engines cause or contribute to air pollution that we have previously determined may reasonably be anticipated to endanger public health or welfare. This finding is appropriate whether we include all large nonroad SI engines in one category or whether we look at engines used in nonrecreational applications separately from engines used in recreational vehicles.

V. Public Participation

Several parties commented on our February 8, 1999 Notice of Proposed Finding. We fully considered these comments in developing today's final finding. A full analysis of the comments and our response to them is contained in the docket for this finding.[11] The majority of the comments received concerned the inputs used for modeling the emissions from engines used in land-based recreational vehicles. The revised modeling inputs that we used were based on the comments we received and additional information we

[10] California Air Resources Board, Staff report for Large SI proposed rulemaking, Table 12, p. 42, September 3, 1998.

[11] ''Summary and Analysis of Comments for Notice of Proposed Finding: Control of Emissions from New Nonroad Spark-Ignition Engines Rated above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines,'' EPA memorandum from John Mueller to docket A–98–01, November 17, 2000.

gathered. We also received several comments concerning the appropriateness of our conclusions in our proposed finding. These comments are also addressed in the response to comments document contained in the docket for this finding.

VI. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, we 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 (58 FR 51735, Oct. 4, 1993). The order defines ''significant regulatory action'' as any regulatory action 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.

We have submitted this finding to the Office of Management and Budget.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment 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.

We have determined that this action will not have a significant adverse impact on a substantial number of small entities. This finding involves no requirements that would impose any burden on industry or other segments of society. It is therefore not necessary to prepare a regulatory flexibility analysis in connection with this finding. A finding that these engines cause or contribute to air pollution in at least two nonattainment areas, however, will lead us to initiate a rulemaking to set emission standards for these engines. In that separate rulemaking, we will review whether the proposed regulations would have a significant economic impact on a substantial number of small entities. The subsequent rulemaking will provide ample opportunity for notice and comment.

C. Paperwork Reduction Act

This finding contains no requirements for collecting, storing, or reporting information.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this finding does not contain federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The finding does not impose any enforceable duties on State, local, or tribal governments. This finding also contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, there will be no economic effects resulting from this finding. Thus, this finding is not subject to the requirements of sections 202 and 205 of the UMRA.

E. National Technology Transfer and Advancement Act

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

This finding involves no technical standards.

F. Protection of Children

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to a rule that is determined to be ''economically significant,'' as defined under Executive Order 12866, if the environmental health or safety risk addressed by the rule has a disproportionate effect on children. For these rules, we 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 we considered.

This finding is not subject to Executive Order 13045, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

G. Federalism

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

federalism implications'' is defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This finding will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This finding creates no mandate on state, local or tribal governments. It imposes no enforceable duties on these or other entities. Thus, the requirements of section 6 of the Executive Order do not apply to this finding.

H. Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we 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 we consult with those governments. If we comply by consulting, Executive Order 13084 requires us 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 our 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 us 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.''

This finding would not significantly or uniquely affect the communities of Indian tribal governments. This finding is to be implemented at the federal level and will impose no compliance obligations on any party. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this finding.

I. 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 finding 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 finding in the **Federal Register**. This finding is not a ''major rule'' as defined by 5 U.S.C. 804 (2).

Dated: November 20, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–30106 Filed 12–6–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86, 94, 1048 and 1051

[FRL–6907–6]

Control of Emissions From Nonroad Large Spark Ignition Engines, Recreational Engines (Marine and Land-Based), and Highway Motorcycles

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: With this advance notice of proposed rulemaking (ANPRM), we are continuing with our process of establishing standards for nonroad engines and vehicles that cause or contribute to air pollution. The ANPRM addresses nonroad engines and vehicles that have yet to be regulated by EPA, including: Large spark ignition (SI) engines such as those used in forklifts and airport tugs; Recreational vehicles using spark ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and Recreational marine diesel engines and marine spark ignition sterndrive and inboard engines.

These engines and vehicles contribute to ozone, carbon monoxide (CO), and particulate matter (PM) nonattainment. We are also concerned in some cases about personal exposure to high levels on CO, air toxics, and PM to persons operating or close to this equipment. With this ANPRM, we invite early input to the process to establishing standards and programs for these nonroad sources.

We are also seeking comment on whether EPA should pursue rulemaking to establish more stringent emissions standards for highway motorcycles. While standards are in place for highway motorcycles, the current standards were established more than twenty years ago. Since off-highway motorcycles are included this ANPRM as part of nonroad recreational vehicles, we believe it may be appropriate to consider standards for both types of motorcycles together.

DATES: We request comment on this Advance Notice by February 5, 2001.

ADDRESSES: You may send written comments in paper form and/or by e-mail. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. You may also submit comments via e-mail to ''nranprm@epa.gov''. In your correspondence, refer to Docket A–2000–01.

EPA's Air Docket makes materials related to this rulemaking available for review in Dockets A–2000–01 and A–98–01. These materials are located at U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460 (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone: (734) 214–4334, Fax: (734) 214–4050, e-mail: borushko.margaret@epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Copies of Documents

This document is also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for internet connectivity. The electronic version of this document is made available on the day of publication on the primary web site listed below. We also publish **Federal Register** documents and related documents on the secondary web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA-AIR/* (either select desired date or use search feature)

2. *http://www.epa.gov/otaq/* (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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I. Overview

A. History of Nonroad Engine Regulations

The process of establishing standards for nonroad engines began in 1991 with a study to determine whether emissions of carbon mononxide (CO), oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) from new and existing nonroad engines, equipment, and vehicles are significant contributors to ozone and CO concentrations in more than one area that has failed to attain the national ambient air quality standards for ozone and CO.[1] In 1994, EPA finalized its finding that nonroad engines as a whole ''are significant contributors to ozone or carbon monoxide concentrations'' in more than one ozone or carbon monoxide nonattainment area.[2]

Upon this finding, EPA was tasked by the Clean Air Act (CAA or the Act) to establish standards for all classes or categories of new nonroad engines that cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area. Since the finding in 1994, EPA has been engaged in the process of establishing programs to control emissions from nonroad engines used in many different applications. Nonroad categories already regulated include:

- Land-based compression ignition (CI) engines (e.g., farm and construction equipment),
- Small land-based spark-ignition (SI) engines (e.g., lawn and garden equipment, string trimmers),
- Marine engines (outboards, personal watercraft, CI commercial)
- Locomotive engines

B. Today's ANPRM

Today's ANPRM provides an initial overview of possible regulatory strategies for nonroad vehicles and engines that have yet to be regulated under EPA's nonroad engine programs. It is a continuation of the process of establishing standards for nonroad engines and vehicles, as required by CAA section 213(a)(3). If, as expected, standards for these engines and vehicles are established, essentially all new nonroad engines will be required to meet emissions control requirements. The rulemaking that begins with this ANPRM therefore is the final round of initial regulations for nonroad engines. The ANPRM covers diesel engines used in recreational marine applications. The ANPRM also covers several nonroad spark ignition (SI) engine applications, as follows:

- Land-based recreational engines (for example, engines used in snowmobiles,

[1] ''Nonroad Engine and Vehicle Emission Study—Report and Appendices,'' EPA–21A–201, November 1991 (available in Air docket A–91–24). It is also available through the National Technical Information Service, referenced as document PB 92–126960.

[2] 59 FR 31306 (July 17, 1994).

off-highway motorcycles, and all-terrain vehicles (ATVs))

- Marine sterndrive and inboard (SD/I) engines [3]
- Land-based engines rated over 19 kw (Large SI) (for example, engines used in forklifts); this category includes auxiliary marine engines, which are not used for propulsion.

We have found that the nonroad engines included in this ANPRM cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area.[4] CAA section 213(a)(3) requires EPA to establish standards that achieve the greatest degree of emissions reductions achievable taking cost and other factors into account. We plan to propose emissions standards and related programs consistent with the requirements of the Act and, with this ANPRM, are seeking early input from interested parties.

In addition to the nonroad vehicles and engines noted above, today's ANPRM also reviews EPA requirements for highway motorcycles. The emissions standards for highway motorcycles were established twenty-three years ago. California recently adopted new emissions standards for highway motorcycles and new standards have also been proposed internationally. There may be opportunities to reduce emissions in a way that also allows manufacturers to benefit from harmonized requirements, which may reduce product lines and production costs. In addition, we believe it is important to consider the emissions standards for highway motorcycles in the context of setting standards for off-highway motorcycles. We are interested in providing regulatory programs for off-highway and highway motorcycles that are consistent, and which may also allow for the transfer of technology across product lines for manufacturers.

This ANPRM covers engines and vehicles that vary in design and use, and many readers may only be interested in one or two of the applications. There are various ways we could group the engines and present information. For purposes of this ANPRM, we have chosen to group engines by common applications (*e.g*, recreational land-based engines, marine engines, large spark ignition engines used in commercial applications). We have attempted to organize the document in a way that allows each reader to focus on the applications of particular interest. The Air Quality discussion which follows in section II is general in nature and applies to all the categories covered by the ANPRM. Sections III through VI of the ANPRM present self-contained discussions of standards and programs for each of the vehicle and engine categories. While some of the information may be repetitive among the discussions, we hope that this structure helps the reader focus on the categories and information of interest. The remaining sections VII through X are generally applicable to all of the engines and vehicles.

II. Air Quality

A. Overview

As directed by the Act, EPA has set National Ambient Air Quality Standards for, among other pollutants, ground-level carbon monoxide, ozone, NO_2, and particulate matter.[5] States are divided into discrete areas for air quality planning purposes. Currently, 17 areas around the U.S. are classified as CO nonattainment areas. Additionally, 31 areas are not in attainment with ozone air quality standards.

State and local governmental organizations charged with designing and implementing emission control programs to bring specific areas into attainment with these air quality standards have mounted significant efforts in recent years to reduce CO and ozone concentrations. Their state implementation plans, combined with federal stationary and mobile source emission control programs, have yielded encouraging signs of success. Emissions of the targeted pollutants have been significantly reduced in many areas. Average carbon monoxide and ozone levels, as well as the number of nonattainment areas, are beginning to decrease. We project, however, that emission increases accompanying general growth and economic expansion will eventually outpace per-source emission rate reductions. Increases in the number of sources, as well as increased use of existing sources, mean that even full implementation of current emission control programs may fall short of that needed to achieve long term attainment and maintenance of the air quality standards.

In addition to nonattainment concerns, we are also concerned about hazardous air pollutants (air toxics). In August 2000, we proposed a list of Mobile Source Air Toxics (MSATs) of concern, including those emitted from nonroad engines.[6] These pollutants are known or suspected to have serious health impacts. The engines and vehicles included in this ANPRM are sources of MSATs which are included on the proposed list, including diesel exhaust and several components of VOC emissions.

B. Public Health and Welfare Concerns

The nonroad engines included in this ANPRM and highway motorcycles all contribute to air pollution with a wide range of adverse health and welfare impacts. The following sections contain a brief description of some of the health effects associated with ozone, PM, air toxics and CO and the importance of continuing to reduce the associated emissions. This section also contains a brief description of issues that are unique to the engines and vehicles being considered in this document. The NPRM will contain a more detailed discussion of the health and welfare benefits which can be expected from a program regulating these engines.

1. Ozone and its Precursors

Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the presence of heat and sunlight. Ozone forms readily in the lower atmosphere, usually during hot, summer weather. VOCs are a broad group of compounds composed mainly of hydrocarbons (HC). Aldehydes, alcohols, and ethers are also present, but in small amounts. VOCs are emitted from a variety of sources, including motor vehicles, chemical plants, refineries, factories, consumer and commercial products, and other industrial sources. NO_X is emitted largely from motor vehicles, nonroad equipment, power plants, and other sources of combustion.

Ozone is a highly reactive chemical compound which can damage both biological tissues and man-made materials. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses,

[3] As a shorthand notation in this document, we are using ''recreational marine engines'' to mean recreational marine diesel engines and all gasoline SD/I engines, even though some SD/I applications could be commercial.

[4] See Final Finding, ''Control of Emissions from New Nonroad Spark-Ignition Engines Rated above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines'' elsewhere in today's Federal Register for EPA's finding for Large SI engines and recreational vehicles. EPA's findings for marine engines are contained in 61 FR 52088 (October 4, 1996) for gasoline engines and 64 FR 73299 (December 29, 1999) for diesel engines.

[5] See 42 U.S.C. 7409.

[6] 65 FR 48058, August 4, 2000.

making people more susceptible to respiratory illnesses. In addition to human health effects, ozone adversely affects crop yield, vegetation and forest growth, and the durability of materials. Because ground-level ozone interferes with the ability of a plant to produce and store food, plants become more susceptible to disease, insect attack, harsh weather and other environmental stresses. Ozone causes noticeable foliar damage in many crops, trees, and ornamental plants (*i.e.,* grass, flowers, shrubs, and trees) and causes reduced growth in plants. Studies indicate that current ambient levels of ozone are responsible for damage to forests and ecosystems (including habitat for native animal species).

Besides their role as an ozone precursor, NO_X emissions produce a wide variety of health and welfare effects.[7,8] Nitrogen dioxide can irritate the lungs and lower resistance to respiratory infection (such as influenza). NO_X emissions are an important precursor to acid rain and may affect both land and water ecosystems. Atmospheric deposition of nitrogen leads to excess nutrient enrichment problems (''eutrophication'') in the Chesapeake Bay and several nationally important estuaries along the East and Gulf Coasts. Eutrophication can produce multiple adverse effects on water quality and the aquatic environment, including increased algal blooms, excessive phytoplankton growth, and low or no dissolved oxygen in bottom waters. Eutrophication also reduces sunlight, causing losses in submerged aquatic vegetation critical for healthy estuarine ecosystems.

Need for NO_X and VOC Control. Photochemical modeling highlights the fact that ozone pollution is a regional problem, not simply a local or state problem. Ozone and its precursors are transported long distances by winds and other meteorological events. Thus, achieving ozone attainment for an area, and thereby protecting its citizens from ozone-related health effects, often depends on the ozone and precursor emission levels of upwind areas. For many areas with persistent ozone problems, attainment of the ozone NAAQS will require control strategies for both NO_X and VOC that extend beyond the areas' boundaries.

We expect that reducing NO_X and HC emissions from engines that would be regulated under this potential program would help reduce the health and welfare effects of ozone.[9] Manufacturers and users of snowmobiles provided comments during the ''finding'' rulemaking indicating that snowmobiles should not be regulated for ozone precursors because snowmobiles are used during cold weather, when ozone is less of a health concern.[10] However, ozone precursors are also responsible for other pollution problems including air toxics, discussed below, and indirect PM. We are examining the need to reduce precursors of ozone in the context of this rulemaking and request comment. In particular, we request comment on whether EPA should distinguish snowmobiles from other recreational vehicles in regulating ozone precursors and whether emissions of ozone precursors such as NO_X and VOC should in any case be regulated due to other pollution problems.

2. Particulate Matter

Particulate matter (PM) is the general term used for a mixture of solid particles and liquid droplets found in the air. These particles, which come in a wide range of sizes, originate from many different stationary and mobile sources as well as from natural sources. They may be emitted directly by a source (direct emissions) or formed in the atmosphere by the transformation of gaseous precursor emissions such as sulphur dioxide (SO_2), nitrogen oxides (NO_X), or organic compounds (secondary particles). Their chemical and physical compositions vary depending on source location, time of year and meteorology.

Scientific studies show a link between inhalable PM (alone, or combined with other pollutants in the air) and a series of significant health effects. Inhalable PM includes both fine and coarse particles. Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or less (also known as $PM_{2.5}$), and coarse particles are those with an aerodynamic diameter between 2.5 and 10 microns. All particles 10 microns or smaller are called PM_{10}. The health and environmental effects of PM are strongly related to the size of the particles.

Diesel particles are a component of both coarse and fine PM, but fall mostly in the fine range. Both coarse and fine particles can accumulate in the respiratory system and are associated with numerous health effects. Exposure to coarse fraction particles is primarily associated with the aggravation of respiratory conditions such as asthma. Fine particles are more deeply inhaled into the lungs than course particles. They are most closely associated with such health effects as decreased lung function, increased hospital admissions and emergency room visits, increased respiratory symptoms and disease, and premature death. Sensitive groups that appear to be at greatest risk to such effects include the elderly, individuals with cardiopulmonary disease such as asthma, and children.

In addition, PM causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States, including many of our National Parks. Other environmental impacts occur when particles deposit onto soils, plants, water or materials. For example, particles containing nitrogen and sulphur that deposit on to land or water bodies may change the nutrient balance and acidity of those environments. An ecosystem condition known as ''nitrogen saturation,'' where addition of nitrogen to soil over time exceeds the capacity of the plants and microorganisms to utilize and retain the nitrogen, has already occurred in some areas of the United States. When deposited in sufficient quantities such as near unpaved roads, tilled fields, or quarries, particles block sunlight from reaching the leaves, stressing or killing plants. Finally, PM causes soiling and erosion damage to materials, including culturally important objects such as carved monuments and statues.

Recreational marine diesel engines tend to be concentrated in specific areas of the country (ports, coastal areas, lakes and rivers), so the emissions contribution of these engines in local areas can be more important. Consequently addressing PM and other emissions from recreational marine diesel engines can be an important tool toward the goal of reducing health and environmental hazards.

Considerations For PM From Recreational Two-Stroke Gasoline Engines. Two-stroke engines used in land-based recreational vehicles generally use a fuel and oil mixture to both produce power while lubricating the engine. As much as 30 percent of the intake charge passes through the engine unburned and exhausts to the atmosphere. As a consequence, PM emissions from these engines can be very high. Two stroke gasoline engines are commonly used in off-highway motorcycles and snowmobiles.

Snowmobile engine emissions are of particular concern in environmentally

[7] ''U.S. EPA (1995), Review of National Ambient Air Quality standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information,'' OAQPS Staff Paper, EPA–452/R–95–005.

[8] ''U.S. EPA (1993), Air Quality Criteria for Oxides of Nitrogen,'' EPA/600/8–91/049aF.

[9] The emissions inventory contributions for these sources are provided in the Final Finding document referenced in footnote 4.

[10] International Snowmobile Manufacturers Association, Docket A–98–01, document IV–D–03.

sensitive areas, such as Yellowstone National Park. Snowmobiles are typically powered by 2-stroke engines that have high emissions of hydrocarbons (HC), carbon monoxide (CO) and PM compared to 4-stroke engines. Recent studies have concluded that particulate emission rates from a snowmobile engine are more comparable to those of older, pre-control diesel engines.[11,12] Particle diameters were found to be typically less than 0.1 microns, which is of respirable size and able to be delivered into the deepest and most sensitive areas of the human lung. While formation rates of secondary PM may be lower in the winter months, PM concentrations can be elevated under some meteorological conditions (*e.g.,* low mixing heights). We request comment on the health benefits of reducing PM emissions from recreational vehicle 2-stroke gasoline engines.

3. Air Toxics

These engines are also sources of a number of chemical species which we have proposed to list as mobile source air toxics (MSATs), that are known or suspected human or animal carcinogens, or have serious noncancer health effects.[13] They include pollutants such as diesel exhaust, benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein, described in more detail below. While the harmful effects of air toxics are of particular concern in areas closest to where they are emitted, they can also be transported and affect other geographic areas. Some can persist for considerable time in the environment.

Many of the air toxics discussed below are components of VOC and we expect that the HC standards discussed in this document would reduce exposure to air toxics and therefore reduce the incidence of cancer and noncancer health effects related to emissions from these engines. We request comment on the need to control air toxics emissions from the engines and vehicles included in this document.

Considerations for Diesel Exhaust. Diesel exhaust emissions are a by-product of incomplete combustion and include gaseous and particulate components. Gaseous components of diesel exhaust include organic compounds, sulfur compounds, carbon monoxide, carbon dioxide, water vapor, and excess air (nitrogen and oxygen). Particulate components include many organic compounds that are mutagenic as well as several trace metals (including chromium, manganese, mercury and nickel) that may have general toxicological significance (depending on the specific chemical species). In addition, small amounts of dioxins have been measured in diesel exhaust, some of which may partition to the particle phase.

Because the chemical composition of diesel exhaust includes hazardous air pollutants, or air toxics, diesel exhaust emissions are of concern to the agency. There have been health studies specific to diesel exhaust emissions which indicate potential hazards to human health that appear to be specific to this emissions source. For chronic exposure, these hazards include respiratory system toxicity and carcinogenicity. Acute exposure also causes transient effects (a wide range of physiological symptoms stemming from irritation and inflammation mostly in the respiratory system) in humans though they are highly variable depending on individual human susceptibility.

The EPA draft Health Assessment Document for Diesel Exhaust was reviewed in a public session by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board on October 12–13, 2000.[14] The CASAC, in public session, found that the Agency's conclusion that diesel exhaust is likely to be carcinogenic to humans by inhalation, was scientifically sound. The comments provided by CASAC on the draft Assessment are being incorporated into the final Assessment to be released in late 2000 or early 2001. California EPA has identified diesel PM as a toxic air contaminant.[15] Several other agencies and governing bodies have also designated diesel exhaust or diesel PM as a ''potential'' or ''probable'' human carcinogen.[16,17,18] The International Agency for Research on Cancer (IARC) considers diesel exhaust a ''probable'' human carcinogen and the National Institutes for Occupational Safety and Health have classified diesel exhaust a ''potential occupational carcinogen''. Thus, the concern for the health hazard resulting from diesel exhaust exposures is widespread. We request comment on the health benefits of reducing PM emissions from marine diesel engines.

Benzene. Benzene is an aromatic hydrocarbon which is present as a gas in both exhaust and evaporative emissions from motor vehicles. Benzene in the exhaust expressed as a percentage of total organic gases (TOG), varies depending on control technology (e.g., type of catalyst) and the levels of benzene and aromatics in the fuel, but is generally about four percent from gasoline engines. The benzene fraction of gasoline evaporative emissions also depends on control technology (i.e., fuel injector or carburetor) and fuel composition (e.g. benzene level and Reid Vapor Pressure or RVP) and is generally about one percent.

The EPA has recently reconfirmed that benzene is a known human carcinogen by all routes of exposure (including leukemia at high, prolonged air exposures), and is associated with additional health effects including genetic changes in humans and animals and increased proliferation of bone marrow cells in mice.[19] Respiration is the major source of human exposure. Long-term exposure to high levels of benzene in the air has been shown to cause cancer of the tissues that form white blood cells. Among these are acute nonlymphocytic leukemia, chronic lymphocytic leukemia and possibly multiple myeloma (primary malignant tumors in the bone marrow). A number of adverse noncancer health effects, blood disorders such as preleukemia and aplastic anemia, have also been associated with low-dose, long-term exposure to benzene. People with long-term exposure to benzene may experience harmful effects on the blood-forming tissues, especially the bone marrow. Many blood disorders associated with benzene exposure may occur without symptoms.

OSHA recently conducted an industrial hygiene survey to examine park employee exposures during winter

[11] ''Characterization of Snowmobile Particulate Emissions conducted for Yellow Stone Park Foundation Inc.,'' James N. Carroll and Jeff J. White, Southwest Research Institute, June 1999.

[12] ''Emissions from Snowmobile Engines using bio-based fuels and lubricants conducted for the Montana department of Environmental Quality,'' Jeff J. White and James N. Carroll, Southwest Research Institute, October 1998.

[13] 65 FR 48058, August 4, 2000.

[14] U.S. EPA(2000) Health Assessment Document for Diesel Exhaust: SAB Review Draft EPA/600/8–90/057 Office of Research and Development, Washington, D.C. The document is available electronically at www.epa.gov/ncea/dieslexh.htm.

[15] ''Proposed Identification of Diesel Exhaust at a Toxic Air Contaminant, Health risk assessment for diesel exhaust,'' California Environmental Protection Agency, April 1998.

[16] ''Carcinogenic effects of exposure to diesel exhaust,'' NIOSH Current Intelligence Bulletin 50. DHHS, Publication No. 88–116, 1988.

[17] ''Diesel and gasoline engine exhausts and some nitroarenes,'' Vol. 46, Monographs on the evaluation of carcinogenic risks to humans, International Agency for Research on Cancer, World Health Organization, 1989.

[18] ''Diesel fuel and exhaust emissions: International program on chemical safety,'' World Health Organization, 1996.

[19] ''U.S. EPA, Carcinogenic Effects of Benzene: An Update,'' National Center for Environmental Assessment, Washington, D.C. 1998.

at Yellowstone National Park.[20] They reported exposure to benzene above the NIOSH recommended exposure levels (REL) of 0.10 ppm. Since exhaust emission benzene levels generally decrease as HC emissions decrease, we expect new emission control technology to substantially reduce ambient benzene levels.

1,3-Butadiene. 1,3-butadiene is formed in engine exhaust by incomplete combustion of fuel. It is not present in evaporative and refueling emissions, because it is not present in any appreciable amount in gasoline fuel. 1,3-butadiene accounts for 0.4 to 1.0 percent of total exhaust TOG, depending on control technology and fuel consumption. Nonroad mobile sources contribute 15.2 percent to the 1,3-butadiene inventory (baseline NTI).

The Environmental Health Committee of EPA's Scientific Advisory Board (SAB), in reviewing the draft document, issued a majority opinion that 1,3-butadiene should be classified as a probable human carcinogen.[21,22] The Agency has revised the draft Health Risk Assessment of 1,3-butadiene based on the SAB and public comments. The draft Health Risk Assessment of 1,3-butadiene will undergo the Agency consensus review, during which time additional changes may be made prior to its public release and placement on the Integrated Risk Information System (IRIS).

Formaldehyde. Nonroad mobile sources contribute 23 percent to the formaldehyde inventory (baseline NTI). EPA has classified formaldehyde as a probable human carcinogen based on evidence in humans and in rats, mice, hamsters, and monkeys.[23] Epidemiological studies in occupationally exposed workers suggest that long-term inhalation of formaldehyde may be associated with tumors of the nasopharyngeal cavity, nasal cavity and sinus. Formaldehyde exposure also causes a range of noncancer health effects, including irritation of the eyes (tearing of the eyes and increased blinking) and mucous membranes. Sensitive individuals may experience these adverse effects at lower concentrations than the general population. In persons with bronchial asthma, the upper respiratory irritation caused by formaldehyde can precipitate an acute asthmatic attack.

The OSHA industrial hygiene survey at Yellowstone, described above, reported exposure to formaldehyde at 0.033 ppm, which is above the NIOSH recommended exposure level of 0.016 ppm.

Acetaldehyde. Nonroad mobile source emissions are responsible for 27 percent of the total acetaldehyde inventory (Baseline NTI). Acetaldehyde is classified as a probable human carcinogen and humans are exposed by inhalation, oral, and intravenous routes. The primary acute effect of exposure to acetaldehyde vapors is irritation of the eyes, skin and respiratory tract. At high concentrations, irritation and pulmonary effects can occur, which could facilitate the uptake of other contaminants.

Acrolein. Nonroad mobile source emissions are responsible for 11 percent of the total acrolein invenory (Baseline NTI). Acrolein is extremely toxic to humans when inhaled, with acute exposure resulting in upper respiratory tract irritation and congestion. The Agency has developed a reference concentration for inhalation (RfC) of acrolein of 0.02 micrograms/m^3. Although no information is available on its carcinogenic effects in humans, EPA considers acrolein a possible human carcinogen based on laboratory animal data.[24]

4. Carbon Monoxide (CO)

Carbon monoxide (CO) is a colorless, odorless gas produced through the incomplete combustion of carbon-based fuels. Carbon monoxide enters the bloodstream through the lungs and reduces the delivery of oxygen to the body's organs and tissues. The health threat from CO is most serious for those who suffer from cardiovascular disease, particularly those with angina or peripheral vascular disease. Healthy individuals also are affected, but only at higher CO levels. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, learning ability and performance of complex tasks.

Several recent epidemiological studies have shown a link between CO and premature morbidity (including angina, congestive heart failure, and other cardiovascular diseases). Several studies in the United States and Canada have also reported an association of ambient CO exposures with frequency of cardiovascular hospital admissions, especially for congestive heart failure (CHF). An association of ambient CO exposure with mortality has also been reported in epidemiological studies, though not as consistently or specifically as with CHF admissions. EPA is reviewing these studies as part of the CO Criteria Document process.

The toxicity of CO effects on blood, tissues and organs have also been topics of substantial research efforts. Such studies provided information for establishing the NAAQS for CO. The current primary NAAQS for CO are 35 parts per million for the one-hour average and 9 parts per million for the eight-hour average. There are currently 17 designated CO nonattainment areas, with a combined population of 31 million. EPA estimated that emissions from nonroad gasoline engines and vehicles have increased by 24 percent from 1980 to 1998.[25]

In addition to concerns related to air quality standards for broad areas, exhaust emissions from indoor applications can cause CO poisoning from individual human exposure. These engines (for example, engines used in forklifts) routinely operate in warehouses and production facilities. Unregulated industrial SI engines frequently have exhaust CO concentrations over 30,000 ppm (3 percent). The maximum allowable time-weighted average 8-hour workplace exposure set by the Occupational Safety and Health Administration is 50 ppm. Manufacturers in some cases may adjust engine calibration for somewhat lower CO emission levels. Also, engines used indoors are often fueled with LPG, which typically has lower CO exhaust concentrations than gasoline-fueled engines. However, improper maintenance or poor calibrations can lead to even higher levels than the 30,000 ppm level noted above from any industrial SI engine.

The typical snowmobile, which utilizes a two-stroke engine, produces significantly more CO than a modern automobile on a unit of work basis. There has been an increasing concern that snowmobile emissions in and around some national parks are reaching significant levels. During the winters of 1994–95 and 1995–96, studies were conducted at Yellowstone, Flagg Ranch, and Grand Teton National Park which indicated that snowmobile tourists are potentially exposed to significant CO

[20] ''U.S. Department of Labor, Industrial Hygiene Survey of Park Employee Exposures During Winter Use at Yellowstone National Park,'' February, 2000.

[21] ''U.S. EPA Health Risk Assessment of 1,3–Butadiene,'' EPA/600/P–98/001A, February 1998.

[22] ''An SAB Report: Review of the Health Risk Assessment of 1,3–Butadiene,'' EPA–SAB–EHC–98, August 1998.

[23] ''U.S. EPA Assessment of health risks to garment workers and certain home residents from exposure to formaldehyde,'' Office of Pesticides and Toxic Substances, April 1987.

[24] ''U.S. EPA Integrated Risk Assessment System (IRIS),'' Office of Health and Environmental Assessment, Cincinnati, OH, 1993.

[25] U.S. EPA (March 2000). ''National Air Pollutant Emission Trends, 1900–1998,'' Office of Air Quality and Standards.

levels.[26] While the studies did not record official exceedances of the CO NAAQs, levels near and in some cases above the 35 ppm NAAQS standard were observed. These measurements were not considered NAAQS exceedances because sampling methods and measurement locations did not meet the criteria for NAAQS measurements. However, the measurements were reported to be scientifically valid and an indication of potentially significant exposure to CO.

A study of snowmobile rider exposure conducted at Grand Teton National Park showed that CO levels when trailing a single snowmobile at distances of 25–125 feet at speeds of 10–40 mph ranged from 0.5–23 ppm, with a maximum level of 45 ppm (as compared to the current NAAQS for CO of 35 ppm).[27] Since snowmobile riders typically travel in large groups, the riders towards the back of the group are likely to experience significantly higher exposures to CO. An additional consideration is that the risk to health from CO exposure increases with altitude, especially for un-acclimated individuals. Therefore, a park visitor who lives at sea level and then rides his or her snowmobile on trails at high-altitude is more susceptible to the effects of CO than local residents. In addition, the OSHA industrial hygiene survey mentioned earlier reported a peak CO exposure of 268 ppm for a Yellowstone employee, in exceedance of the NIOSH peak recommended exposure limit of 200 ppm.

The U.S. Coast Guard reported cases of CO poisoning caused by recreational boat usage.[28] These Coast Guard investigations into recreational boating accident reports between 1989 to1998, show that 57 accidents were reported, totaling 87 injuries and 32 fatalities, that involved CO poisoning. We believe that controlling CO emissions from marine engines could provide some benefits to boaters.

C. National Emissions Inventory

We have estimated the contribution of the sources included in this ANPRM to the nationwide emissions inventories for the 2000 and 2007 calendar years, as shown in Table II–1.[29]

TABLE II–1.—ESTIMATED NATIONWIDE ANNUAL EMISSION LEVELS

[in thousand short tons (percent of mobile source inventory)]

	NO_X		HC		CO		PM	
	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent
Year 2000:								
Nonroad Sources in ANPRM	371	2.8	822	11.0	7,157	9.0	8.4	1.2
Highway Motorcycles	22	0.2	21	0.3	147	0.2	0.4	0.1
Year 2000 Total	393	3.0	843	11.3	7,304	9.2	8.8	1.3
Year 2007:								
Nonroad Sources in ANPRM	444	4.3	870	16.6	7,536	9.7	9.2	1.5
Highway Motorcycles	25	0.2	26	0.5	171	0.2	0.5	0.1
Year 2007 Total	469	4.5	896	17.1	7,707	9.9	9.7	1.6

III. Recreational Vehicles

A. Background

1. What Recreational Vehicles Would be Included in This Rulemaking?

The vast majority of vehicles that fall into the land-based recreational vehicles category are snowmobiles, off-highway motorcycles (e.g., dirt bikes), and all terrain vehicles (ATVs).[30] The engines used in these vehicles are a subset of nonroad SI engines.[31] Engines used in recreational vehicles include both Small SI (at or below 19 kW) and Large SI engines (above 19 kW). These engines, however, were excluded from our Small SI program (for lawn mowers, chain saws, etc.) because they have different design characteristics and usage patterns than other engines in the Small SI category. This suggests that the recreational engines covered by this ANPRM should be tested differently than Small SI engines. We would similarly expect to treat them separately from our Large SI engine program (discussed later in this ANPRM). We therefore request comment on whether engines used in recreational vehicles should be tested and regulated differently from other small and Large SI engines.

In our rulemaking regulating Small SI engines (defined as nonroad SI engines below 19 kW), we established criteria that effectively excluded the types of engines used in the recreational vehicles listed above.[32] These criteria, such as normal range of operating engine rpm, can greatly affect the basic engine design and the opportunities for emissions control. Engines used in some other types of recreational vehicles may be covered by the Small SI standards, depending on the characteristics of the engines. For example, lawnmower-type engines used in go carts would typically be covered by the Small SI standards. Engines used in golf carts are also typically included in the Small SI program due to their design and

[26] Exposure to Snowmobile Riders to Carbon Monoxide, Park Science Volume 17—No. 1, National Park Service, U.S. Department of the Interior.

[27] Snook and Davis, 1997, ''An Investigation of Driver Exposure to Carbon Monoxide While Traveling Behind Another Snowmobile.''

[28] Summarized in an e-mail Phil Cappel of the U.S. Coast Guard to Mike Samulski of the U.S. Environmental Protection Agency, October 19, 2000.

[29] Inventory data is further provided in Tables 1 and 2 of the Final Finding (see footnote 4).

[30] ATVs are typically four-wheeled vehicles that are straddled by the operator.

[31] Almost all recreational vehicles are equipped with SI engines. Any diesels used in these applications must meet our nonroad diesel engine standards.

[32] See 40 CFR 90.1(b)(5) for the list of criteria.

operating characteristics being similar to lawnmower-type applications.

There may be other types of recreational vehicles that should be included in the recreational vehicles program in addition to snowmobiles, off-highway motorcycles, and ATVs. For example, some small mopeds or motor scooters could be included in the program depending on their characteristics.[33] We are interested in information and request comment about other types of vehicles that may exist so that we may consider them in developing our proposals.

There may be some uncertainty surrounding the use of ''recreational'' in distinguishing between vehicle types and in determining which set of standards a vehicle or engine must meet. ATVs, for example, may have some utility aspects to their use. We request comment how to best differentiate among engines types. We could establish a definition for ''recreational'', for example, based on the primary intended use of the vehicle model. Under such an approach, vehicles primarily intended for utility or work use by the manufacturer would be part of either the Small or Large SI programs, as applicable. We could also differentiate engines based solely upon engine design and operating characteristics without regard to usage; this option might eliminate potential confusion over whether a particular engine should be appropriately certified as a ''recreational'' or ''utility'' engine.

Hobby engines. The Small SI rule categorized engines used in model cars, boats, and airplanes as recreational engines and exempted them from the Small SI program.[34] Historically, we have exempted hobby engines from our regulations. The nonroad diesel engine final rule exempted hobby engines due to feasibility, testing, and compliance concerns related to regulating such small engines. Also noted in the nonroad diesel engine rule, because hobby engines are very small with very low power output relative to other nonroad engines and have low annual usage rates, they contribute very little to emissions inventories.[35] We request comment on how to proceed for SI hobby engines, including data and information that would allow us to further consider the potential for establishing standards for them or for exempting them from this rule.

2. Who Makes Recreational Vehicles?

Based on industry information available to us, the recreational vehicle industry appears to be dominated by eight manufacturers. Of these eight manufacturers, seven of them manufacture a combination of two or more of the three recreational vehicle sub-categories: off-highway motorcycles, ATVs, and snowmobiles. For example, there are four major companies that manufacture both off-highway motorcycles and ATVs. There are three major companies that manufacture ATVs and snowmobiles and one major company that manufactures all three. These eight companies represent approximately 95 percent of all domestic sales of recreational vehicles.

We are aware of five major companies that dominate sales of off-highway motorcycles. Four of these companies, Honda, Kawasaki, Suzuki, and Yamaha, are long established, major corporations that manufacture a number of products including highway and off-highway motorcycles. They have dominated the off-highway motorcycle market for over thirty years. The fifth major company, KTM, is also long established but has had a major impact in domestic sales over the last 10 to 15 years. These five companies account for approximately 90 to 95 percent of all domestic sales for off-highway motorcycles. There are also several relatively small companies that manufacture off-highway motorcycles, many of which specialize in racing or competition machines.

Based on available industry information, four major manufacturers, Arctic Cat, Bombardier (also known as Ski-Doo), Polaris, and Yamaha, account for approximately 99 percent of all domestic snowmobile sales. The remaining percent comes from very small manufacturers who tend to specialize in unique designs or racing machines. The ATV sector has the broadest assortment of major manufacturers. With the exception of KTM, all of the companies noted above for off-highway motorcycles and snowmobiles are significant ATV producers. These seven companies represent over 95 percent of total domestic ATV sales. The remaining 5 percent come from importers who tend to import inexpensive, youth-oriented ATVs from China and other Asian nations.

3. What Types of Engines Are Used in the Vehicles?

The engines used in recreational vehicles tend to be small, air- or liquid-cooled, reciprocating Otto-cycle engines that operate on gasoline.[36] They are designed to be used in vehicles, where engine performance is characterized by highly transient operation, with a wide range of engine speed and load capability. Maximum engine speed is typically well above 5,000 rpm. Also, the vehicles are equipped with transmissions to ensure performance under a variety of operating conditions.

These engines can be separated into two-stroke and four-stroke designs. The distinction between two-stroke and four-stoke engines is important for emissions because two-stroke engines tend to emit much greater amounts of unburned hydrocarbons (HC) and particulate matter (PM) than four-stroke engines of similar size and power. Two-stroke engines also have greater fuel consumption resulting in poorer fuel economy than four-stroke engines, but they also tend to have higher power output per unit displacement, lighter weight, and better cold starting performance. These advantages combined with a simple design and lower manufacturing costs tend to make two-stroke engines a popular choice as the power unit for recreational vehicles. Currently, snowmobiles use two-stroke engines almost exclusively, whereas about 63 percent of all off-highway motorcycles (predominantly in high performance, youth, and entry-level bikes) and 12 percent of all ATVs sold in the United States use two-stroke engines. Engine displacement for off-highway motorcycles and ATVs typically range from 50 cubic centimeters (cc) to 500 cc for two-stroke engines, and 50 cc to 650 cc for four-stroke engines. Snowmobile engines range from 100 cc to over 1,000 cc.

The basis for the differences in engine and exhaust emissions performance between two-stroke and four-stroke engines can be found in the fundamental differences in how two-stroke and four-stroke engines operate. Four-stroke operation takes place in four distinct steps: intake, compression, power, and exhaust. Each step corresponds to one up or down ''stroke'' of the piston or 180° of crankshaft rotation. The first step of the cycle is for an ''intake'' valve in the combustion chamber to open during the intake stroke allowing a mixture of air and fuel to be drawn into the cylinder while the piston moves down the cylinder. The intake valve then closes and the momentum of the crankshaft causes the

[33] The definition of motor vehicle excludes ''any vehicle that cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces'' (see 40 CFR 85.1703(a)(1)). Such vehicles are therefore considered nonroad vehicles.

[34] 80 FR 24292, April 25, 2000.

[35] 63 FR 56971, October 23, 1998.

[36] Otto cycle is another name for a spark-ignition engine which utilizes a piston with homogenous external or internal air and fuel mixture formation and spark ignition.

piston to move back up the cylinder compressing the air and fuel mixture. At the very end of the compression stroke, the air and fuel mixture is ignited by a spark from a spark plug, and begins to burn. As the air and fuel mixture burns, increasing temperature and pressure cause the piston to move back down the cylinder. This is referred to as the ''power'' stroke. At the bottom of the power stroke, an exhaust valve opens in the combustion chamber and as the piston moves back up the cylinder, the burnt gases are pushed out through the exhaust valve to the exhaust manifold, and the cycle is complete.

In a four-stroke engine, combustion and the resulting power stroke only occur once every two revolutions of the crankshaft. In a two-stroke engine, on the other hand, combustion occurs in every revolution of the crankshaft. Two-stroke engines eliminate the intake and exhaust strokes, leaving only compression and power strokes. This is due to the fact that two-stroke engines do not use intake and exhaust valves. Instead, they have intake and exhaust ''ports'' in the sides of the cylinder walls. With a two-stroke engine, as the piston approaches the bottom of the power stroke, it uncovers exhaust ports in the wall of the cylinder. The high pressure combustion gases blow into the exhaust manifold. As the piston gets closer to the bottom of the power stroke, the intake ports are uncovered, and fresh mixture of air and fuel are forced into the cylinder while the exhaust ports are still open. Exhaust gas is ''scavenged'' or forced into the exhaust by the pressure of the incoming charge of fresh air and fuel. In the process, however, some mixing between the exhaust gas and the fresh charge of air and fuel takes place, so that some of the fresh charge is also emitted in the exhaust. The loss of part of the fuel out of the exhaust during scavenging is one of the major reasons for the very high hydrocarbon emission characteristics of two-stroke engines. The other major reason for high HC emissions from two-stroke engines is their tendency to misfire under low load conditions due to greater combustion instability.

4. What Are the Pollutants of Interest for Each Type of Vehicle?

Recreational vehicles utilizing two-stroke engines, such as snowmobiles and some models of off-highway motorcycles and ATVs, emit significant quantities of fine particulate matter (PM), unburned hydrocarbons (HC), and carbon monoxide (CO). Recreational vehicles utilizing four-stroke engines, such as some models of off-highway motorcycles and most ATVs, also emit significant quantities of CO, however, they tend to emit considerably lower levels of HC and PM than their two-stroke counterparts. Both engine types emit oxides of nitrogen (NO_X). Two-stroke engines tend to emit very low levels of NO_X whereas four-stroke engines emit greater quantities, similar to four-stroke HC emission levels. Exhaust hydrocarbon emissions also include significant quantities of toxic air contaminants including benzene, formaldehyde, acetaldehyde, and 1,3 butadiene. The most important source of recreational vehicle emissions is the engine exhaust, but HC emissions are also produced from the crankcase in four-stroke engines, by evaporation from the fuel system, and by vapor displacement during refueling.

5. What Programs Are in Place in California and Elsewhere To Control Emissions from Recreational Vehicles?

California established standards for off-highway motorcycles and ATVs which took effect in January 1997 (1999 for vehicles with engines of 90 cc or less). The standards, shown in Table III–1, are based on the highway motorcycle chassis test procedures. Manufacturers may certify ATVs to optional standards, also shown in Table III–1, which are based on the utility engine test procedure.[37] This is the test procedure over which Small SI engines are tested. The stringency level of the standards was based on the emissions performance of 4-stroke engines and advanced 2-stroke engines equipped with a catalytic converter. California anticipated that the standards would be met initially through the use of high performance 4-stroke engines.

TABLE III–1.—CALIFORNIA OFF-HIGHWAY MOTORCYCLE AND ATV STANDARDS FOR MODEL YEAR 1997 AND LATER

[1999 and later for engines at or below 90 cc]

	HC	NO_X	CO	PM
Off-highway motorcycle and ATV standards (g/km)	[a] 1.2	.....	15	.....
	HC + NO_X		CO	PM
Optional standards for ATV engines below 225 cc (g/bhp-hr)	[a] 10.0		300	.....
Optional standards for ATV engines below 225 cc (g/bhp-hr)	[a] 12.0		300	.....
Optional standards for ATV engines at or above 225 cc (g/bhp-hr)	[a] 10.0		300	.....

[a] Corporate-average standard.

California revisited the program in the 1997 time frame because a lack of certified product from manufacturers was reportedly creating economic hardship for dealerships. The number of certified off-highway motorcycle models was particularly inadequate.[38] In 1998, California revised the program, allowing the use of uncertified products in off-highway vehicle recreation areas with regional/seasonal use restrictions. Currently, noncomplying vehicles can be legally sold in California and used in attainment areas year-round and in nonattainment areas during months when exceedances of the state ozone standard are not expected. For enforcement purposes, certified and uncertified products are identified respectively with green and red stickers. Only about one-third of off-highway motorcycles sold in California are certified. All certified products are powered by 4-stroke engines.

California has not adopted standards for snowmobiles. In addition, EPA is not aware of emission control programs for nonroad recreational vehicles that have been adopted in other countries.

[37] Notice to Off-Highway Recreational Vehicle Manufacturers and All Other Interested Parties Regarding Alternate Emission Standards for All-Terrain Vehicles, Mail Out #95–16, April 28, 1995, California Air Resources Board (Docket A–2000–01, document II–D–06).

[38] Initial Statement of Reasons, Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-highway Recreational Vehicles and Engines, State of California Air Resources Board, October 23, 1998 (Docket A–2000–01, II–D–08).

B. Technology

1. What Are the Baseline Technologies and Emissions Levels?

As discussed earlier, recreational vehicles are equipped with relatively small high performance two- or four-stroke engines that are either air- or liquid-cooled.[39] The fuel system used on these engines are almost exclusively carburetors. Two-stroke engines lubricate the piston and crankshaft by mixing oil with the air and fuel mixture. This is accomplished by most contemporary 2-stroke engines with a pump that sends two-cycle oil from a separate oil reserve to the carburetor where it is mixed with the air and fuel mixture. Some less expensive two-stroke engines require that the oil be mixed with the gasoline in the fuel tank. Four-stroke engines inject oil via a pump throughout the engine as the means of lubrication. With the exception of those vehicles certified in California, most of these engines are unregulated and thus have no emission controls. In fact, because performance and durability are such important qualities for recreational vehicle engines, they all operate with a ''rich'' air and fuel mixture. That is, they operate with excess fuel, which enhances performance and allows engine cooling which promotes longer lasting engine life. However, rich operation results in high levels of HC, CO, and PM emissions. Also, two-stroke engines tend to have high scavenging losses, where up to a third of the unburned air and fuel mixture goes out of the exhaust resulting in high levels of raw HC.

TABLE III–2.—TYPICAL RANGE OF EXHAUST EMISSIONS FOR RECREATIONAL VEHICLES

Recreational vehicle type	Engine type	HC	CO	NO_X	PM	Units
Snowmobiles	2-stroke	67–200	196–400	0.3–1.62	0.7–6.1	g/hp-hr
Off-highway Motorcycles/ATVs	2-stroke	8–26	16–37	0.01–0.1	0.002–0.025	g/km [a]
	4-stroke	0.4–3	7–50	0.03–0.2	0.006–0.025	g/km

[a] Emission measurement for motorcycles is in grams per kilometer rather than grams per mile because the motorcycle industry, as well as Federal, California, and international motorcycle emission standards use ''Systeme International d'Unites'' or SI units, which measure distance in kilometers rather than miles.

2. What Technology Approaches Are Available To Control Emissions?

A number of approaches are available to control emissions from recreational vehicles. The simplest approach would consist of modifications to the base engine, fuel system, cooling system, and recalibration of the air and fuel mixture. These could, for example, consist of changes to valve timing for four-stroke engines, changing from air to liquid cooling, and the use of advanced carburetion techniques and electronic fuel injection (EFI) in lieu of traditional carburetion systems. Other approaches could include using an oxidation catalyst alone or in conjunction with secondary air. The engine technology that may have the most potential for maximizing emission reductions from two-stroke engines is the use of direct fuel injection (DI). Direct fuel injection is able to reduce or even eliminate scavenging losses by pumping only air through the engine and then injecting fuel into the combustion chamber after the intake and exhaust ports have closed. The use of oxidation catalysts in conjunction with direct injection could potentially reduce emissions even further. Finally, because four-stroke engines emit significantly lower levels of HC than two-stroke engines, the conversion of two-stroke engine technology to four-stroke engine technology could be a desirable approach.

We request comment as to whether there are any other approaches to emission reduction for recreational vehicles that have not been discussed here. We are interested in information on feasibility, cost and corresponding emission reduction potential, and other issues associated with the above and other technologies. Specifically, we request comment on the effectiveness and durability of oxidation catalysts for these applications, the cost, corresponding emission reductions, and feasibility of direct fuel injection for two-stroke engine applications, and the cost and feasibility of switching from 2-stroke to 4-stroke engines. Any data on engines similar to those used in recreational equipment using these technologies is also requested.

3. What Level of Control May Be Feasible?

Calibration changes and engine modifications can reduce HC and CO emissions somewhat, in the range of 10 to 30 percent. While the precise level of control anticipated from recreational vehicles is not yet known, further HC reductions in the 70 to 90 percent range may be achievable from current two-stroke engines. We expect that the bulk of the HC reductions would occur through the elimination of scavenging losses, with additional reductions possible through the use of an oxidation catalyst. Because four-stroke engines already have low HC emissions relative to two-stroke engines, we would expect more modest HC reductions from four-stroke engines as a result of new emission standards. Control strategies that would reduce HC emissions would also generally reduce PM and toxics. This is especially true for 2-stroke engines where high levels of PM and toxics are the result of scavenging losses.

We believe that similar levels of control can be expected for CO emissions as for HC emissions. The bulk of CO reductions will come from improvements to the fuel system, either through enleanment (i.e., less fuel) of the air and fuel mixture, from now on referred to as A/F ratio, or the improvement of fuel atomization (i.e., smaller fuel droplets), with additional reductions possible through the use of an oxidation catalyst.[40–41] Such strategies are also likely to reduce HC and PM emissions as well.

The NO_X levels emitted from recreational vehicles, especially for those equipped with two-stroke engines, are very low since most recreational vehicles typically operate using a ''rich'' calibration (i.e., with excess fuel) for performance and durability purposes.

Some emission reduction techniques such as changes in engine design and calibration aimed at reducing HC and CO emissions may increase NO_X. However, we expect that any increases

[39] The engines are small relative to automotive engines. For example, automotive engines typically range from one liter to well over five liters in displacement, whereas off-highway motorcycles would range from 0.05 liters to 0.65 liters.

[40–41] Fuel atomization refers to the size of individual fuel droplets. The smaller the fuel droplet is, the better it is combusted or burned.

resulting from HC and CO standards would be minimal. To ensure continued low NO_X performance, we request comment on the appropriateness of setting a capping standard for NO_X emissions or combining NO_X control with HC by setting a HC + NO_X standard.

We request comment on the various strategies available to reduce emissions and the costs and potential corresponding emissions reductions of those strategies.

C. Standards and Program Approaches

Although off-highway motorcycles, ATVs, and snowmobiles are all categorized as recreational vehicles, we expect to establish separate emissions standards for them. The most fundamental reason for varying standards is that the operating characteristics are significantly different. Since we typically try to evaluate and control emissions performance under normal operating conditions, it is likely we will adopt different test procedures for the different applications. Also, the level of stringency and the timing of the standards may vary depending on the types of emissions control technology available, cost impacts, industry make-up, and other factors that we must consider in establishing the program. We request comments on the appropriateness of separate emission standards for off-highway motorcycles, ATVs, and snowmobiles.

Generally, we will be considering what level of emissions control is appropriate and the lead-time necessary for manufacturers to achieve those emissions reductions. There are a number of approaches that have been used in programs for other nonroad engines to effectively reduce emissions, both in the near term and long term. These approaches often incorporate some level of flexibility into the program which has allowed manufacturers to achieve lower overall emissions levels, perhaps at less cost. Programs have been tailored to the particulars of the engine categories and industries being regulated to achieve the overall goals of the program.

In many programs, we have established either a single set (tier) of standards, or multiple tiers of standards that progressively achieve further reductions over a number of years. We have also established corporate-average standards, including declining fleet averages where manufacturers must calculate fleet average emissions levels and reduce those emissions incrementally each year over several model years. Also, in some cases, standards have been phased-in over a number of years as a percentage of sales or by an engine characteristic such as size. Some programs also include averaging, banking and trading, discussed below in section III.C.4.

We have used such mechanisms, in part, to allow manufacturers to plan their research, development, and product introductions. Such program approaches may allow manufacturers to achieve long-term emission reductions that may not otherwise be achievable. For example, a declining fleet average approach over several years may provide near term reductions and also provide manufacturers with lead-time needed to employ advanced technology in an orderly and efficient manner. Also, averaging can provide flexibility by allowing manufacturers to certify some engines to levels above the standard as long as excess emissions are offset by sales of engines certified to emissions levels below the standard. However, such approaches may be of limited value to small businesses or companies offering only a few models and may not be justified for some programs. We encourage you to consider these approaches, and any others, in commenting on the standards discussed below.

1. Off-Highway Motorcycles and ATVs

We are considering establishing HC, NO_X, and CO standards for off-highway motorcycles and ATVs. PM is discussed separately in section III.C.3, below. We expect the largest benefit in terms of reducing the ozone precursors NO_X and HC to come from reducing HC emissions from two-stroke engines. Two-stroke engines have very high HC emissions levels. Baseline NO_X levels are relatively low for engines used in these applications and therefore initial NO_X standards may serve to cap NO_X emissions. CO reductions can be expected from both 2-stroke and 4-stroke engines, as CO levels are somewhat similar for the two engine types.

HC Standard. In the current off-highway motorcycle and ATV market, consumers can choose between 2-stroke and 4-stroke models in most sizes and categories. Each engine type offers unique performance characteristics. Some manufacturers specialize in 2-stroke or 4-stroke models while others offer a mix of models.

The HC standard is likely to be a primary determining factor for what technology manufacturers choose to employ to meet emissions standards overall. As described in the previous section, a variety of technological approaches appear promising to control HC emissions. HC emissions can be reduced substantially by switching from 2-stroke to 4-stroke engines. The California emissions control program for off-highway vehicles provides ample data on the emissions performance capability of 4-stroke engines in off-highway motorcycles and ATVs. Off-highway motorcycles certified to California standards for the 2000 model year have HC certification levels ranging from 0.4 to 1.0 g/km. The motorcycles have engines ranging in size from 50 cc to 650 cc and none of these motorcycles are equipped with catalyst technology.

Technologies are also available for the two stroke engine that may reduce HC emissions levels to near those provided by 4-stroke engines. Technologies such as direct fuel injection and catalysts have been applied to 2-stroke engines used in other applications, such as personal watercraft and outboard marine engines, in response to emissions control requirements. However, only vehicles equipped with 4-stroke engines have been certified to the California standards. Two stroke models are sold in California, but only under California's allowance for the sales and use of uncertified products under certain circumstances (discussed above in section III.A.5).

In determining what standards to propose, we will be carefully examining the feasibility and cost of both 2-stroke and 4-stroke technologies. Modest reductions (up to 30 percent) appear feasible through the use of engine modifications and calibration changes. We are also interested in approaches that would reduce HC emissions substantially (for example, 75 to 90 percent) from baseline 2-stroke engine levels. Clearly, switching to 4-stroke engines achieves this goal and some manufacturers would likely choose this approach to meeting such standards.

However, some manufacturers may want an opportunity to achieve HC reductions through the use of advanced technology 2-stroke engines. This approach may require more time and investment in research and development than switching to 4-stroke engines entirely, but could result in more cost effective emissions control in the long term. Also, if such engines were developed, consumers may benefit from having a variety of engine types from which to choose. We request comment on whether EPA should attempt to set standards in a manner that would encourage the development of clean 2-stroke technology, and if so, how that objective could best be accomplished.

We request comments on the appropriate level of HC control for off-

highway motorcycles and ATVs. We are interested in perspectives on whether an HC standard should be based on the capabilities of 4-stroke or 2-stroke engine emissions control technologies. We are also interested in comment on establishing separate standards for the two engine types. In making their recommendations, commenters are encouraged to consider the level of emission reductions currently achieved under the California emissions control program, described above, and the need and opportunity for further emissions reductions. Commenters are also encouraged to consider the benefits of aligning highway motorcycle HC standards, discussed in section IV below, with the HC standards for off-highway motorcycles and ATVs. We are interested in comments on technology, cost, corresponding emission reduction potential, necessary lead-time, phase-in, and performance implications, including supporting rationale and data, where possible. Commenters are also invited to address the cost and corresponding emissions reductions of various other potential strategies.

As described above, we may propose averaging approaches such as corporate-average standards and averaging, banking, and trading. We request comment on the appropriateness of averaging ATVs and off-highway motorcycles together, assuming they are required to meet the same standards, or standards of similar stringency. Comments on other aspects of averaging as it might apply to HC compliance are requested (for example, averaging recreational vehicles with other engines identified in this document).

NO_X standard. While the focus of the program would be on achieving HC reductions, we also request comment on the need for and appropriateness of NO_X control for these engines. We are considering standards in the form of HC plus NO_X. We would expect a small NO_X increase when going from uncontrolled two-stroke engines to engine designs which meet new emissions standards. This NO_X increase is due to engine efficiency improvements and emission control strategies available for 2-stroke engines. A NO_X plus HC standard recognizes this trade-off. Also, 4-stroke engines typically have higher NO_X emissions than 2-stroke engines.

When we established the HC plus NO_X standard for personal watercraft, we adjusted the level of the standard to account for the inclusion of NO_X. We request comment on this approach for establishing an HC plus NO_X limit for motorcycles and ATVs. We also request comment on how much of an adjustment to the standard is needed to account for NO_X emissions or what level would be appropriate for a NO_X cap. We also request comment on a NO_X plus HC standard in the context of averaging approaches for compliance. Finally, we request comment on the cost implications and corresponding emission reduction potential of NO_X control strategies.

CO standard. We expect to establish a CO limit for motorcycles and ATVs, along with HC and NO_X standards. We will be considering the levels established by California for these vehicles and the standards for highway motorcycles. We request comment on what level of CO control would be appropriate for these vehicles, considering costs (and other statutory factors). We also request comment on whether or not the CO standard should be established as a separate technology driver or based on the performance of technologies likely to be needed to achieve low HC emissions levels. We request comment on the cost implications and corresponding emission reduction potential of CO control strategies. As with HC and NO_X, we are interested in the usefulness of considering averaging approaches for CO emissions compliance.

Test procedures. The form and numeric level of the standards depend on the test procedures and test cycle over which emissions are measured. As described above in section III.A.5., California off-highway motorcycle and ATV standards are based on the highway light-duty vehicle test procedure (the FTP). This is a chassis-based test procedure, which requires the vehicle to be tested rather than only the engine.

Some manufacturers have noted that they do not currently have chassis-based test facilities capable of testing ATVs. California provides manufacturers with the option of certifying ATVs using the engine-based, utility engine test procedure (SAE J1088), and most manufacturers use this option for certifying their ATVs. Manufacturers have facilities to chassis test motorcycles and therefore California does not provide an engine testing certification option for motorcycles. Manufacturers have noted that requiring chassis-based testing for ATVs would require them to invest in additional testing facilities which can handle ATVs, since ATVs do not fit on the same roller(s) as motorcycles used in chassis testing.

Currently, for off-highway motorcycles and ATVs, we are planning to use the FTP test cycle, as it appears to be the best available test cycle for these vehicles. We will be carefully examining the potential pros and cons of using an engine-based test procedure for ATVs and request comment on this issue. We request comment on whether or not the approach taken by California is suitable for the federal program, including the use of the above test procedures and their effectiveness in ensuring in-use emissions reductions.

We are particularly interested in comments on the use of the utility engine cycle for ATVs, and whether or not a different engine-based test cycle, such as the one being considered for snowmobiles (discussed below), may be more suitable. The utility engine cycle is a 5-mode steady-state test cycle which includes testing at only one engine speed (85 percent of rated speed). Such a test procedure is appropriate for engines used in lawn and garden applications, but may not be appropriate for engines used in vehicle applications. The snowmobile engine test procedure is also a 5-mode steady-state test procedure but the engine speed varies by mode along with torque. We believe this is generally more representative of how an engine behaves in a vehicle application.

2. Snowmobiles

Emissions standards established by EPA through this rulemaking will be the first for snowmobiles. Unlike off-highway motorcycles and ATVs, there are no emissions standards for snowmobiles in California to use as a point of reference. Snowmobiles are almost entirely equipped with two-stroke engines which have very high HC and CO emission levels. Our focus for snowmobiles will be to reduce those emission levels. NO_X emissions are much less of a concern because of the seasonal nature of snowmobile use and low baseline levels.

CO standard. CO emissions may be a larger concern for snowmobiles than for off-highway motorcycles and ATVs due to their high CO emissions levels and the general concern of high ambient CO level in some areas during cold weather. In initial discussions with the International Snowmobile Manufacturers Association (ISMA), manufacturers have suggested setting standards that would result in CO reductions of 10 to 30 percent, phased in over model years 2004–2006. As described in section III.B. above, promising technologies are available which have the potential to reduce emissions to significantly lower levels. These technologies go beyond minor engine modifications and calibration changes and may require additional lead time to implement. However, with

appropriate lead time, further CO emission reductions may be reasonably achievable.

We will be evaluating potential technologies and the costs of those technologies during the development of our proposal for snowmobiles. We will consider the timing of the standards in the context of the level of stringency we propose, recognizing that more lead-time would likely be needed to apply and prove-out the application of certain advanced technologies. Also, as described above, we will consider the value of implementation flexibilities such as averaging and phase-in schedules in allowing manufacturers to meet more stringent standards in an orderly manner. We request comment on what level of CO emissions control is feasible and appropriate for snowmobiles, on the cost and corresponding emissions reduction potential of various strategies, on the lead time needed to achieve new standards, and on the usefulness of implementation flexibility in meeting the standards.

HC standard. As mentioned in section II, we received comments indicating that HC control for snowmobiles for purposes of reducing ozone may not be necessary due to their seasonal use. However, we believe that there may be a need to control HC emissions from snowmobiles. In particular, even if we accept the commenters' argument regarding ozone, HC emissions may result in increased exposure to air toxics. As discussed in section II, hydrocarbons are made up of numerous components, some of which have been identified as toxic air pollutants.

We anticipate that many of the technology approaches available to manufacturers to reduce CO emission levels would also reduce HC emissions levels. The two-stroke engines used in snowmobiles have very high HC levels and we believe that establishing standards to reduce those levels would be appropriate. Manufacturers have suggested an HC reduction of up to 30 percent by 2008, in addition to the 30 percent reduction in CO by 2006, discussed above. As with CO, we believe technology is likely to be available to achieve a greater degree of control, especially with several years lead time or phase-in. Reductions in CO and HC of 70 percent or more may be feasible.

We request comment on what level of HC emissions control is feasible and appropriate for snowmobiles, the cost and corresponding emissions reductions associated with such levels of emissions control, the lead time needed to achieve new standards, and the usefulness of implementation flexibility in meeting the standards. In particular, we request comment on the appropriateness of requiring any control of HC for snowmobiles given the seasonal nature of their use versus air toxic concerns for riders.

Test Procedures. Snowmobile manufacturers, in conjunction with Southwest Research Institute, have developed a test procedure for measuring snowmobile emissions.[42] This effort was undertaken due to increasing interest in snowmobile engine emission levels and a lack of a test procedure based on a representative duty-cycle. The test cycle is a 5-mode steady-state cycle, with different engine speed and torque points chosen and weighted to reflect in-use engine operation (see table below). The study also found that the utility engine cycle (J1088), which had previously been used, was not appropriate for snowmobiles.

TABLE III–3.—SNOWMOBILE ENGINE TEST CYCLE

(SAE paper 982017)

mode	1	2	3	4	5
normalized speed	1.0	0.85	0.75	0.65	idle
normalized torque	1.0	0.51	0.33	0.19	0
Weight, %	12	27	25	31	5

We request comment on the use of this test procedure as the basis of future snowmobile standards. This test procedure appears to be the best currently available for snowmobiles, but we request comment on the need for additional tests or test modes to ensure in-use emissions control. For example, idle CO emissions have been highlighted as a particular concern for snowmobiles and we request comment on the need for additional emphasis on idle CO emissions within the test procedure.

3. The Need for PM Standards

As discussed in section II, Air Quality, we are very concerned about current high particulate matter levels in snowmobile exhaust. High PM levels are primarily attributable to the use of traditional 2-stroke engines. PM emissions are also a concern for off-highway motorcycles and ATVs to the extent that 2-stroke engines are used in those applications.

We believe that the technology changes that would be needed to significantly reduce CO and HC levels, such as direct injection or 4-stroke engines, may also dramatically reduce PM levels. If HC and CO standards were established at a level only requiring minor modifications to the engines, PM could remain a problem for snowmobiles and a PM standard may be necessary. We request comment on whether or not we should establish a PM standard for snowmobile engines and what level of stringency would be appropriate. We also request comment on the cost implications (equipment costs, etc.) associated with measuring PM as part of the certification procedure.

4. Averaging, Banking, and Trading

Depending on the structure of the proposed program, the level of stringency of the proposed standards, and other considerations, we may propose averaging, banking, and trading provisions (ABT) for recreational vehicles/engines. We have established ABT programs in many of our engine-based emissions control programs in cases where we have set standards that require significant technology changes. The ABT programs allow manufacturers

[42] ''Development and Validation of a Snowmobile Engine Emission Test Procedure,'' Christopher W. Wright and Jeff J. White, SAE Paper 982017.

to earn credits by introducing clean engines sooner than required or by certifying engines to levels below the standards. Manufacturers may use the credits to certify engines to levels above the standards in the same model year (averaging), keep the credits for use in a later model year (banking), or transfer the credits to another manufacturer (trading).

In some cases, we have not established ABT programs because we believed the standards we were adopting were achievable without the additional flexibility. In such cases, EPA found that the added complexity inherent in having an ABT program, both for EPA and the manufacturers, would outweigh the potential benefits of the program.

ABT can be beneficial in providing incentive to manufacturers for the early introduction of new technologies, allowing certain engine families to be trail blazers for new technology. This flexibility can allow us to consider a more stringent program than would otherwise be appropriate under CAA section 213. The programs also provide flexibility to manufacturers for product planning and can provide opportunity for more cost effective introduction of product lines. ABT is tailored to meet the specific needs of standards and programs being established. This is necessary to avoid issues such as windfall credits and the potential of stockpiling credits which could result in a significant delay of the standards being adopted or future standards not yet considered. We request comment on integrating ABT into the programs for recreational vehicles. We are interested in comment on the scope of ABT, including any particular issues we should consider in developing such a program, and whether or not credit trading among different vehicle types should be allowed.

D. Additional Program Considerations

1. Competition Off-Highway Motorcycles

Currently, a large portion of off-highway motorcycles are marketed as competition/racing motorcycles. These models often represent a manufacturer's high performance offerings in the off-highway market. Most such motorcycles are of the motocross variety,[43] although some high performance enduro models[44] are marketed for competition use. These high performance motorcycles are largely powered by 2-stroke engines, though some 4-stroke models have been introduced in recent years.

When used for competition, motocross motorcycles are mostly involved in closed course or track racing. Other types of off-highway motorcycles are usually marketed for trail or open area use. When used for competition, these models are likely to be involved in point-to-point competition events over trails or stretches of open land. There are also specialized off-highway motorcycles that are designed for competitions such as ice racing, drag racing, and observed trials competition. A few races involve professional manufacturer sponsored racing teams. Amateur competition events for off-highway motorcycles are also held frequently in many areas of the U.S.

Clean Air Act sections 216 (10) and (11) exclude engines and vehicles ''used solely for competition'' from nonroad engine and vehicle regulations. For purposes of past nonroad engine emissions control regulatory programs (for example, the nonroad CI, recreational marine, and Small SI programs), EPA has defined the term ''used solely for competition'' as follows:

Used solely for competition means exhibiting features that are not easily removed and that would render its use other than in competition unsafe, impractical, or highly unlikely.

If retained for the recreational vehicles program, the above definition may be useful for identifying certain models that are clearly used only for competition. For example, there are motorcycles identified as ''observed trials'' motorcycles which are designed without a standard seat because the rider does not sit down during competition. This feature would make recreational use unlikely. Most motorcycles marketed for competition, however, do not appear to have physical characteristics that constrain their use to competition. Without such distinguishing characteristics, determining that a vehicle is used solely for competition becomes more challenging.

Manufacturers have recommended that EPA use the definition for competition motorcycle that EPA has previously established for purposes of exempting motorcycles from its noise regulations, as follows:

Competition motorcycle means any motorcycle designed and marketed solely for use in closed course competition events.[45]

Manufacturers further recommended that closed course competition include ''any organized competition event covering a closed, repeated, or defined route intended for easy viewing of the route by spectators. Such events could include, but are not limited to, motocross, enduro, hare scrambles, observed trials, short track, dirt track, drag race, hill climb, ice race, and land speed trials * * *''. Manufacturers recommended that EPA require labels designating the vehicles for competition use only.[46]

Based on confidential sales information, we believe that vehicles designated for competition by manufacturers could exceed 50 percent of total sales under their recommended approach. We believe that many ''competition'' style motorcycles are likely to also be used, at least by many end users, primarily or often for recreational riding. Section 216(10) of the Act excludes from the definition of nonroad engines vehicles used solely for competition. We are concerned that the approach suggested by manufacturers may be overly broad and therefore would not meet the conditions of this exclusion.

In a recent rulemaking for marine diesel engines, we addressed competition engines by providing exclusions for engines used in professional competitions only.[47] Engines used for amateur competition or occasional competition are not excluded under that rule. The exclusion is available both to manufacturers and to someone modifying an engine for professional competition use (normally, we would prohibit someone from making changes to a certified engine in ways that adversely affect emissions control). This would be one possible

[43] A motocross bike is typically a high performance off-highway motorcycle that is designed to be operated in motocross competition. Motocross competition is defined as a circuit race around an off-highway closed-course. The course contains numerous jumps, hills, flat sections, and bermed or banked turns. The course surface usually consists of dirt, gravel, sand, and mud. Motocross bikes are designed to be very light for quick handling and easy manueverability. They also come with large knobby tires for traction, high fenders to protect the rider from flying dirt and rocks, aggressive suspension systems that allow the bike to absorb large amounts of shock, and are powered by high performance engines. They are not equipped with lights.

[44] An enduro bike is very similar in design and appearance to a motocross bike. The primary difference is that enduros are equipped with lights and have slightly different engine performance that is more geared towards a broader variety of operation than a motocross bike. An enduro bike needs to be able to cruise at high speeds as well as operate through tight woods or deep mud.

[45] 40 CFR 205.151(a)(3).

[46] ''MIC Recommended Definitions for Pending EPA Recreation Vehicle Exhaust Emissions Proposal,'' Motorcycle Industry Council, Draft, June 1, 2000. Docket A–2000–01.

[47] 64 FR 73305, December 29, 1999.

approach to address the competition use issue for recreational vehicles.

We are very interested in receiving input on the competition exemption issue described above. We request comment on ways the program can be established to provide an exclusion for motorcycles used solely for competition, consistent with the Act, without excluding vehicles that are often used for other purposes. Ideally, the program can be established in a way that provides reasonable certainty at time of certification. However, approaches could include reasonable measures at time of sale or in-use that would provide assurance that the competition exemption is being applied appropriately. We request information and data on the use of off-highway motorcycles for competition and recreation that would inform the rulemaking process.

2. Crankcase Emissions From Recreational Vehicles

We will be considering proposing the elimination of crankcase emissions from recreational vehicles. Venting the crankcase to the atmosphere is a source of HC emissions that has been cost effectively controlled in many other engine applications. Rather than venting these emissions to the atmosphere, they can be routed back to the engine for combustion. We believe that any effect on exhaust emission levels due to the additional hydrocarbons which are routed to the engine through the crankcase emissions control system can be substantially reduced, if not eliminated, through the recalibration of the engine. We are not aware of any issues particular to closing the crankcase on engines used in recreational vehicles. California has required the elimination of crankcase emissions on off-highway motorcycles and ATVs as part of their program. We request comments on the costs, emission reductions, and any other issues associated with requiring the elimination of crankcase emissions from recreational vehicles.

3. Compliance Measures

Along with emissions standards, we will be considering requirements to ensure in-use compliance with those standards over the useful life of the recreational vehicles/engines. The goal of these measures would be to promote high quality engine design, production, and in-use emissions performance. Compliance programs typically include certification, production line testing, and in-use testing components. Under these programs, manufacturers must submit data and other information prior to introducing the engine into commerce certifying that the engine meets applicable standards, and there is the ability to verify compliance through engine testing at the production line and in-use. We expect to examine the structure and effectiveness of compliance programs contained in other nonroad emissions control programs in determining what types of measures would be most appropriate for recreational vehicles.

Because of similarities in the applications, engine characteristics, and production volumes, we will carefully consider whether the compliance programs for recreational vehicles should be modeled after the programs adopted to control emissions from marine outboard engines and personal watercraft.[48] Some manufacturers making these marine products also make recreational vehicles, and are therefore familiar with the structure of the marine engines program.

We encourage interested parties to review the compliance program in place for outboard engines and personal watercraft and provide input to EPA on the potential for applying the same types of compliance measures to these other recreational vehicles. In particular, we are interested in comments on requirements for manufacturer production line and in-use testing. For outboard engines and personal watercraft, the production line testing program requires manufacturers to test engines as they leave the production line. This process is used to provide a quality control check on the manufacturer's production processes to ensure that engines are routinely assembled in a way such that they continue to meet emission performance requirements when coming off the assembly line. The manufacturer in-use testing program requires manufacturers to select engines from the in-use fleet and test a portion of their engine families each year. These requirements focus resources on ensuring in-use compliance and are key components to the overall compliance program we have established for recreational marine engines.

4. Consumer Modifications

We are aware that consumers sometimes modify engines and exhaust systems on their recreational vehicles. Some of these changes are done to enhance operating performance. Others are to maintain optimal performance under varying operating conditions (*i.e.,* changes in altitude, weather, etc.). We request information on the types of modifications that are common for the different types of recreational vehicles and any information on their impact on emission performace. We are especially interested in those modifications that would affect the emissions performance of the vehicle, and could be considered tampering under the Act for engines certified to emissions standards. We also request information that would help us better understand how common these practices are for the different types of vehicles. Understanding the scope of these practices will help us establish standards and program requirements that achieve in-use emissions reductions.

5. Useful Life

For highway motorcycles, we currently have three distinct useful life categories that are based on engine displacement. The useful life for all three categories are five years or 12,000 km, 18,000 km, or 30,000 km depending on which category the motorcycle falls under. California has established a useful life of 5 years or 10,000 km for off-highway motorcycles and ATVs. For some of our nonroad engine regulations, we have based useful life on time (*i.e.,* hours). We request information that would help us determine the most appropriate method for establishing useful life for recreational vehicles. For example, a certain number of hours may be appropriate for snowmobiles and possibly ATVs, whereas a useful life similar to that used for highway motorcycles or California off-highway motorcycles may be more appropriate for off-highway motorcycles. We request comment on what the appropriate useful life levels and values would be for the various types of recreational vehicles.

6. Consumer Labeling

We request comment on the potential for a consumer labeling program for recreational vehicles. We are also interested in comment on this topic for recreational marine engines, as discussed in section V.E.10. The purpose of a labeling program would be to educate consumers so that they could make informed decisions concerning engine emissions when they purchase a recreational vehicle. One example of a consumer labeling program is the California Air Resources Board's requirement that personal watercraft and outboard engines sold in California starting in 2001 be labeled as either low, very-low, or ultra-low depending on their emission levels.

We request comment on the merit and cost of including such a program in our proposal for recreational vehicles and

[48] 61 FR 52088, October 4, 1996.

whether the program should be voluntary or mandatory. We also request comment on programmatic aspect of labeling such as the content of the label, the number of tiers that would be useful in distinguishing among recreational vehicle models, and the pollutant(s) that should be used in establishing those tiers. Finally, we request comment on any other appropriate incentives for introducing new clean technologies that may be available.

IV. Highway Motorcycles

In addition to the nonroad vehicles and engines noted above, today's ANPRM also reviews EPA requirements for highway motorcycles. The emissions standards for highway motorcycles were established twenty-three years ago. California recently adopted new emissions standards for highway motorcycles and new standards have also been proposed internationally. There may be opportunities to reduced emissions in a way that also allows manufacturers to benefit from harmonized requirements, which may reduce product lines and production costs. In addition, we believe it is important to consider the emissions standards for highway motorcycles in the context of setting standards for off-highway motorcycles. We are interested in providing regulatory programs for off-highway and highway motorcycles that are consistent, which may also allow for the transfer of technology across product lines for manufacturers. Consequently, we request comment on the appropriateness of examining and potentially revising the highway motorcycle emission standards in the same time frame, and in the same rulemaking, in which we plan to address emission standards for recreational vehicles.

A. What Is a Highway Motorcycle, and Who Makes Them?

Motorcycles come in a variety of two- and three-wheeled configurations and styles. For the most part, however, they are two-wheeled self-powered vehicles. Federal regulations currently define a motorcycle as ''any motor vehicle with a headlight, taillight, and stoplight and having: two wheels, or three wheels and a curb mass less than or equal to 680 kilograms (1499 pounds).'' (See 40 CFR 86.402–86.478). Vehicles that otherwise meet the motorcycle definition but have engine displacements less than 50 cubic centimeters (cc) (generally, youth motorcycles, most mopeds, and some motor scooters) are currently not covered by federal regulations. Also currently excluded are motorcycles which, ''with an 80 kg (176 lb) driver, * * * cannot: (1) Start from a dead stop using only the engine; or (2) Exceed a maximum speed of 40 km/h (25 mph) on level paved surfaces' (*e.g.,* some mopeds). Most scooters and mopeds have very small engine displacements and are typically used as short-distance commuting vehicles. Motorcycles with larger engine displacement are more typically used for recreation (racing or touring) and may travel long distances. Both EPA and California regulations further sub-divide highway motorcycles into classes based on engine displacement. Table IV–1 shows how these classes are defined.

The currently regulated highway category includes motorcycles termed ''dual-use'' or ''dual-sport,'' meaning that their designs incorporate features that enable them to be reasonably competent on and off road. Dual-sport motorcycles generally can be described as street-legal dirt bikes, since they tend to bear a closer resemblance in terms of design features and engines to true off-highway motorcycles than to highway cruisers or sport bikes. However, another category of motorcycle, referred to as ''enduros,'' are very similar in appearance to dual-sport motorcycles, but are typically equipped with higher performance engines and have traditionally been categorized as nonroad motorcycles and not been subject to the highway emission standards. Therefore, we request comment as to how we can better determine which motorcycles are street-legal and which are not.

Throughout this ANPRM the term ''highway motorcycle'' is intended to include all motorcycles covered by the current federal regulations; thus, dual-sport motorcycles are included in this definition. We currently believe that all highway motorcycle engines sold in the U.S., including those that power dual-sport motorcycles, are four-stroke engines.

TABLE IV–1.—MOTORCYCLE CLASSES

Motorcycle class	Engine displacement (cubic centimeters)
Class I	50—169.
Class II	170—279.
Class III	280 and greater.

Highway motorcycles are dominated by larger engines, with engine displacements exceeding 1000 cc for the most powerful ''superbikes.'' According to the Motorcycle Industry Council (MIC), in 1998 there were about 5.4 million highway motorcycles in use in the United States (only 565,000 of these were dual-sport), more than three-fourths of which had an engine displacement of over 449 cc.[49] Sixty percent had an engine displacement greater than 749 cc. Inclusion of the dual-sport motorcycles in this figure tends to skew the numbers somewhat, even despite the fact that their total numbers are relatively small, because their dirt bike heritage leads them to be weighted towards smaller engines. According to the MIC data, three-fourths of dual-sport motorcycles had an engine displacement of less than 350 cc, whereas two-thirds of the remaining motorcycles (those purely designed for road use) had a displacement of over 749 cc. Total sales in 1998 of highway motorcycles was estimated to be about 411,000, or about 72 percent of motorcycle sales. About 13,000 of these were dual-sport motorcycles. The remaining 28 percent of sales were strictly off-highway motorcycles, which are currently unregulated.

We are aware of a half-dozen companies, Honda, Harley Davidson, Yamaha, Kawasaki, Suzuki, and BMW, which account for near 95 percent of all motorcycles sold. Dozens of other minor players make up the remaining few percent. Based on available information, over half of all motorcycles sold in 1998 were made by Honda and Harley Davidson, with the two companies maintaining almost equal market shares of about 25 percent each.

B. What Is the Regulatory History?

1. Environmental Protection Agency Regulations

In 1974 EPA issued an advance notice of proposed rulemaking that discussed the possible implementation of emission controls for highway motorcycles for the first time and requested comment on a number of issues. Taking into account the comments received on the ANPRM, EPA issued an NPRM the following year for the control of exhaust and crankcase emissions from new motorcycles. The proposal addressed standards for HC, CO, and NO_X, proposing a set of interim standards for 1978 and 1979 and final standards equivalent to the light-duty vehicle standards in effect at that time. The NPRM was followed by a Final Rule promulgated in 1977 (42 FR 1126, Jan. 5, 1977) which established interim standards effective for the 1978 and 1979 model years and ultimate standards effective starting with the 1980 model year. The interim standards ranged from 5.0 to 14.0 g/km HC depending upon engine displacement,

[49] ''1999 Motorcycle Statistical Annual,'' Motorcycle Industry Council.

while the CO standard of 17.0 g/km applied to all motorcycles. The 1980 standards, which were more lenient than those that were proposed and which lacked a NO_X standard, are essentially those that remain in effect today. While the final standards did not differ based on engine displacement, the useful life over which these standards must be met ranged from 12,000 km (7,456 miles) for Class I motorcycles to 30,000 km (18,641 miles) for Class III motorcycles. These standards were updated in 1989 to include methanol-fueled motorcycles starting with the 1990 model year, then again in 1994 to include natural gas-fueled and liquefied petroleum gas-fueled motorcycles starting with the 1997 model year. Crankcase emissions from motorcycles are also prohibited. There are no current federal standards for evaporative emissions from motorcycles. The current federal standards are shown in Table IV–2.

TABLE IV–2.—CURRENT FEDERAL EXHAUST EMISSION STANDARDS FOR MOTORCYCLES

Engine size	HC (g/km)	CO (g/km)
All	5.0	12.0

2. Regulation by the California Air Resources Board

Motorcycle emission standards in California were originally identical to the federal standards that applied to the 1978 through 1981 model years. The definitions of motorcycle classes used by California continue to be identical to the federal definitions. However, California has revised their standards several times to bring them to their current levels. In 1982 the standards were modified to reduce the HC standard from 5.0 g/km to 1.0 or 1.4 g/km, depending upon engine displacement. California adopted an evaporative emission standard of 2.0 g/test for 1983 and later model year motorcycles. In 1984 California amended the regulations for 1988 and later model year motorcycles to further lower emission standards and provide additional compliance flexibility to manufacturers. The 1988 and later standards could be met on a corporate-average basis, and the larger (Class III) bikes (280 cc and above) were split into two separate categories: 280 cc to 699 cc and 700 cc and greater. These are the standards being met in California today. Like the federal standards, there are no currently applicable NO_X standards for highway motorcycles in California. Under the corporate-averaging scheme, no individual engine family is allowed to exceed a cap of 2.5 g/km. Like the federal program, California also prohibits crankcase emissions.

TABLE IV–3.—CURRENT CALIFORNIA HIGHWAY MOTORCYCLE EXHAUST EMISSION STANDARDS

Engine size (cc)	HC (g/km)	CO (g/km)
50–279	1.0	12.0
280–699	1.0	12.0
700 and above	1.4	12.0

In 1998 the California Air Resources Board (CARB) proposed new standards for Class III highway motorcycles that would take effect in two phases—a ''Tier 1'' to start with the 2004 model year, followed by a ''Tier 2'' that would take effect starting with the 2008 model year. These standards were finalized with minor modifications on November 22, 1999. Existing California standards for Class I and II motorcycles remained unchanged. As with the current standards, manufacturers will be able to meet the requirements on a corporate-average basis. Perhaps most significantly, this recent CARB action brings some level of NO_X control to motorcycles by establishing a combined $HC+NO_X$ standard. No changes were made by the CARB action to the CO standard, which remains at 12.0 g/km. In addition, CARB is providing an incentive program to encourage the introduction of motorcycles compliant with the Tier 2 standard prior to the 2008 model year. This incentive program allows the accumulation of credits that manufacturers can use to meet the 2008 standards. Like the federal program, these standards will also apply to dual sport motorcycles.

TABLE IV–4.—TIER 1 AND TIER 2 CALIFORNIA CLASS III HIGHWAY MOTORCYCLE EXHAUST EMISSION STANDARDS

Model year	Engine displacement	$HC+NO_X$ (g/km)	CO (g/km)
2004 through 2007 (Tier 1)	280 cc and greater	1.4	12.0
2008 and subsequent (Tier 2)	280 cc and greater	0.8	12.0

California also adopted a new definition of small volume that would take effect with the 2008 model year. Historically, California had a definition of small volume that applied to the 1984 through 1987 model years (5,000 units per model year), but no definition that has applied since. Thus, for the 1988 through 2007 model years, all manufacturers must meet the standards, regardless of production volume. Small volume manufacturers, defined in CARB's recent action as a manufacturer with combined California sales of Class I, Class II, and Class III motorcycles not greater than 300 units, do not have to meet new standards until the 2008 model year, at which point the Tier 1 standard applies. CARB intends to evaluate whether the Tier 2 standard should be applied to small volume manufacturers in the future.[50]

3. European Regulations

The European Commission recently proposed a new phase of motorcycle standards, which would start in 2003, and are considering a second in 2006. Whereas the current European standards make a distinction between two-stroke and four-stroke engines, the proposed standards would apply to all motorcycles regardless of engine type, leading to a technology-independent regulatory framework. The 2003 standards would require emissions to be below the values shown in Table IV–5, as measured over the European ECE–40 test cycle. The phase of standards being considered for 2006 are still in a draft form and have not yet been officially proposed, but in addition to taking another step in reducing motorcycle emissions, the 2006 standards are expected to incorporate an improved motorcycle test cycle, as noted in Section IV.D.2 below.

[50] CARB, October 23, 1998 ''Proposed Amendments to the California On-Road Motocycles Regulation'' Staff Report: Initial Statement of Reasons.

TABLE IV–5.—EUROPEAN COMMISSION PROPOSED 2003 MOTORCYCLE EXHAUST EMISSION STANDARDS

HC (g/km)	CO (g/km)	NO_X (g/km)
1.2	5.5	0.3

C. Highway Motorcycle Emission Control Technology

1. Federal Standards

While highway motorcycles have had to apply some low-level control technologies to meet the current standards, the current federal standards require a technology mix comparable to the pre-catalyst stage for passenger cars. The standards that took effect starting in the 1980 model year precipitated the elimination of highway two-stroke engines and a transition to a fleet composed entirely of four-stroke engines. In general, the standards prompted the use of leaner air-fuel mixtures, electronic ignition systems, improvements in manufacturing tolerances in the carburetor and fuel handling systems, PCV valves to control crankcase emissions, and some engine redesign and modifications (changes to the camshaft, valve and ignition timing, and combustion chamber design).

2. California Standards

Despite the greater stringency of the current California standards (*i.e.,* those that apply in the current model year), most manufacturers have been able to comply without the use of catalytic converters, and only a few expensive high-performance motorcycles have used fuel injection systems. The majority of motorcycles have been able to meet these standards by using, in addition to the measures noted above for the federal standards, engine modifications and more advanced calibration strategies, with air injection systems being commonly used in the larger motorcycle models. A few models have been certified with 3-way catalytic converters and fuel injection systems.

The Tier 1 and Tier 2 standards taking effect in California in 2004 and 2008, respectively, will require some additional technologies.[51] Many of the control technologies that have been applied successfully to four-stroke engines in passenger cars may have some potential application to four-stroke motorcycle engines. Some, such as fuel injection and catalytic converters, have already been successfully used on some motorcycle engines, as noted above. Other passenger car technologies may arrive on motorcycles soon due to the upcoming California requirements. However, California did not base the Tier 1 standard effective in 2004 on the widespread application of catalytic converters. California has determined the 1.4 g/km $HC+NO_X$ standard will be largely feasible by reducing engine-out emissions using mostly engine systems (*e.g.*, fuel injection, pulse air injection, valve overlap changes), rather than relying on catalytic after-treatment. According to California, the Tier 2 standard will be more of a challenge to industry and existing technologies are likely to be modified and optimized for motorcycle application to achieve 0.8 g/km $HC+NO_X$. They claim that such technologies could include computerized fuel injection, high-efficiency closed-loop two- or three-way catalytic converters, precise air-fuel ratio controls, programmed secondary pulse-air injection, low-thermal capacity exhaust pipes, and others which are available today or in the foreseeable near future. California has also suggested that some manufacturers may be able to meet the Tier 2 standards on some models without the use of catalytic converters.

D. Standards and Program Approaches

We have identified a number of key issues and decision points that may impact any action we may take regarding standards for highway motorcycles. We request detailed comments and data regarding the issue areas described in this section.

1. Exhaust Emission Standards

In general we request comment on the technological feasibility, cost, and appropriateness of implementing new more stringent emission standards for highway motorcycles. We also request comment on technologies that might enable reductions in motorcycle emissions, and the potential magnitude of such reductions. We request comment on the appropriate time frame for implementing new emission standards for highway motorcycles. In addition, we request detailed comments on the following specific issue areas.

Harmonization with California. In many program areas, including light-duty and heavy-duty vehicles and engines, harmonization with California has frequently been a significant objective, and is often a desirable outcome for industry. When federal and California compliance programs are harmonized, manufacturers are more easily able to produce engine families that comply with both programs, rather than having to consider whether or how to design and market engine families separately for California and the remaining 49 states. In addition, historically any time the California program is significantly more stringent than the federal program there is a possibility that some individual states will elect to enforce the California program (as several states currently do with light-duty vehicles), further complicating compliance, marketing, and distribution for the manufacturers. Given that California has recently put in place technologically challenging standards for Class III motorcycles in a time frame that we would be likely to consider for a possible federal program, we are likely to look very closely at the pros and cons of harmonizing the federal program with the recently finalized California standards. We request comment on all aspects of the California program and whether the California standards are appropriate for a nationwide federal program. Commenters should address technological feasibility, cost, corresponding potential emissions reductions, appropriate time frame, structure (*e.g.*, a fleet average approach vs. something else), and potential advanced emission control technologies associated with California-level standards and with any other level of standards a commenter may consider appropriate.

As noted earlier, the recent action by California did not address emissions from Class I and Class II motorcycles. We request comment on the need to consider emission reductions from all classes of motorcycles, including Class I and Class II.

Harmonization with off-highway motorcycles. Since we will be promulgating emission standards for off-highway motorcycles for the first time, it may make sense to have standards that apply to both, off-highway and on-highway motorcycles. This could be beneficial for manufacturers that produce both types of motorcycles, since they could spread their resources across both programs. In addition, the experience and knowledge used in developing emission compliant highway motorcycles could possibly be transferred to off-highway motorcycle applications. However, we also acknowledge that many off-highway motorcycles use two-stroke engines, where two-stroke engines are no longer used in highway applications and some of the information used in meeting highway standards may not be applicable. Therefore, we request comment on the appropriateness of harmonization of highway and off-

[51] California Air Resources Board, ''Final Statement of Reasons for Rulemaking,'' December 10, 1998.

highway motorcycle emission standards and the costs and corresponding emissions reductions associated with this approach.

2. Test Cycle

The test cycle currently used to for compliance with the motorcycle emission standards, in both the federal and California programs, is the FTP–75. Motorcycles are tested on a specialized motorcycle chassis dynamometer on the traditional FTP, the same cycle used for light-duty vehicles and trucks, although the driving schedule speeds and accelerations are reduced for Class I and II motorcycles. It is now widely acknowledged that the traditional FTP does not adequately represent some high-emission modes that vehicles experience in actual use. When the cycle was first adopted for passenger cars in the early 1970's, the limited capabilities of the chassis dynamometers at that time made it necessary to limit the speeds and acceleration rates of the driving cycle. Thus, the top speed and acceleration rates seen on the FTP are much less than most vehicles—especially motorcycles—can achieve on the road. Consequently, we request comment on whether the existing US06 driving cycle for light-duty vehicles and trucks—or some other more representative driving cycle—may be appropriate for highway motorcycles, and if so, what standards might be appropriate. We request data on how motorcycles are driven in actual use that might support or reject the appropriateness of a high-speed/high-acceleration driving cycle for motorcycles.

In addition, there is an effort underway under the auspices of the United Nations/Economic Commission for Europe (UN/ECE) to develop a global harmonized world motorcycle test cycle (WMTC). The objective of this work is to develop a scientifically supported test cycle that accurately represents the in-use driving characteristics of motorcycles. The United States is also a participating member of UN/ECE. EPA has stated that present levels of environmental protection will not be lowered in order to achieve regulatory harmonization. In its recent proposal, the European Commission has announced its intention to consider a global test cycle for the second phase of its proposed standards, expected to take effect in 2006. We request comment on all issues related to pursuing a globally harmonized test cycle.

3. Evaporative Emission Standards

As noted earlier, the existing federal program does not require compliance with a limit on evaporative emissions from motorcycles, while California does. We request comments and supporting information on the appropriateness of harmonization with the California evaporative standards or whether other evaporative emission standards might be an appropriate element of the federal program. We also request comment on the costs and corresponding emissions reductions associated with adopting evaporative emission standards.

E. Additional Program Considerations

1. Addressing Currently-Excluded Vehicles

In addition, we may consider developing appropriate standards for those types of vehicles now excluded from compliance with emission standards. This would include mopeds and scooters that are under 50 cc or that otherwise can not meet the applicability criteria in the regulations (a mix of two- and four-stroke engines). As noted earlier, some of these vehicles do not meet the regulatory definition of motor vehicle by not being able to exceed 25 mph, thus it may be appropriate to consider such vehicles as nonroad vehicles and may be appropriate to regulate them under the recreational vehicle regulations. We request comment on the appropriateness, technological feasibility, and cost of implementing emission standards for these currently unregulated vehicles. We request comment on approaches to reducing emissions from these types of vehicles, and on the technologies that might be used to reduce emissions, both for two- and four-stroke models.

2. Consumer Modifications

A significant issue that emerged in the context of the new California standards is the rate at which consumers make modifications to their motorcycles, often using aftermarket parts, to enhance performance, sound, and/or appearance. The Motorcycle Industry Council expressed a concern to California that standards which result in the widespread use of catalysts will achieve less benefits than projected due to consumer tampering with the exhaust systems. Such tampering, which can frequently involve the replacement of exhaust pipes that may include the removal of the catalytic converter, can clearly offset a significant portion of the emission benefits. We request comment on this issue, and in particular request any data that may demonstrate the magnitude of these consumer practices. We request comment on approaches to standard-setting that may mitigate this problem while also enabling motorcycles to take advantage of proven technologies such as catalytic converters.

3. Small Volume Manufacturers

The issue of how to define a small volume manufacturer by regulation was also a significant one that arose in the context of the new California standards. Motorcycle manufacturers with fewer than 500 employees meet the current definition of a small business under the classifications established by the Small Business Administration. The current federal regulations define a small volume motorcycle manufacturer as one whose projected U.S. sales of motorcycles is less than 10,000 units. We request comment on how the existing federal definition may interact with the new California definition, and whether, in the context of the new California definition (described earlier), any inequities are created between the two motorcycle compliance programs. We request comment on the appropriateness of the existing federal definition, and, in the context of revised federal standards, what types of compliance flexibilities might be appropriate for those manufacturers defined as small volume.

4. Useful Life

As noted earlier, the current federal standards were put in place more than twenty years ago. An important aspect of the overall emission standards, in addition to the numerical limits, is the vehicle useful life over which applicability with the standards must be demonstrated when the vehicle is certified. The current useful life definitions, like the numerical emission limits, were put in place twenty years ago. In conjunction with evaluating the possibility of revising emission standards for highway motorcycles, we believe it may be appropriate to reevaluate the useful life definitions in the context of current technology and driving habits. As is clearly the case with passenger cars, motorcycles may have evolved in the last twenty years to last longer and be driven more miles. Congress found it necessary to increase the useful life of passenger cars in the 1990 Clean Air Act Amendments from 50,000 miles to 100,000 miles based on the longevity of newer passenger cars. It may be time for a similar adjustment for highway motorcycles as design and manufacturing improvements may have extended the typical operating life of highway motorcycles. We request comments and supporting data that may support or refute the need to evaluate and possibly extend the useful life of highway motorcycles. The current

useful life definitions are shown in Table IV–6.

TABLE IV–6.—USEFUL LIFE DEFINITIONS FOR MOTORCYCLE CLASSES

Motorcycle class	Useful life
Class I	5 years or 12,000 km (7,456 miles).
Class II	5 years or 18,000 km (11,185 miles).
Class III	5 years or 30,000 km (18,641 miles).

V. Recreational Marine Engines

A. Background

1. What Marine Engines Are Already Covered by EPA Programs?

We originally proposed emission standards for all marine engines in 1994.[52] This included outboard and personal watercraft engines, sterndrive and inboard spark-ignition engines, and recreational and commercial compression-ignition engines. EPA then decided to set standards for marine diesel engines in a separate rulemaking because of the many unique issues related to those engines. Because uncontrolled sterndrive and inboard spark-ignition engines appeared to be a low-emission alternative to outboard engines in the marketplace, even after outboard emission standards were fully phased in, we decided to set emission standards only for outboard and personal watercraft engines.[53] Outboard and personal watercraft engines were almost all two-stroke engines with much higher emission rates compared to the sterndrive and inboard engines which were all four-stroke engines. We are now working to conclude the effort to set emission standards for SI marine engines as we develop a different set of requirements for sterndrive and inboard SI engines.

Following the 1994 proposal, we set Tier 2 and Tier 3 standards for land-based nonroad diesel engines and marine diesel engines rated below 37kW.[54] This led us to propose comparable emission control requirements for larger marine diesel engines.[55] Although all marine diesel engines were included in the 1998 ANPRM, EPA decided to subdivide marine diesel engines further to accommodate the special concerns that apply to engines used in recreational marine applications.[56] These special concerns included high power-to-weight ratios needed for planing vessels and potential small business impacts. We have finalized emission standards for commercial marine diesel engines and are now developing requirements for recreational marine diesel engines.[57]

2. What Marine Engines Are Included in This Rulemaking?

In this action, we are giving advance notice for our proposal to establish emission standards for new spark-ignition sterndrive and inboard marine engines and new compression-ignition recreational marine engines at or above 37 kW. For spark-ignition engines, this includes jet boat and air boat engines, as these can be similar to sterndrive and inboard engines and thus are part of the sterndrive/inboard (SD/I) class. These are the only recreational marine engines for which we have not yet promulgated emission standards.

For the compression-ignition engines, we are focusing on reductions in oxides of nitrogen and particulate matter emissions. For the spark-ignition engines we are focusing on reductions in oxides of nitrogen and hydrocarbon emissions.

References to ''marine diesel engines'' in this document are intended to cover compression-ignition marine engines. CI engines are typically operated on diesel fuel although other fuels, such as compressed natural gas, may also be used. Similarly, all references to ''gasoline marine engines'' in this document are intended to include all spark-ignition marine engines regardless of fuel type. For SI engines, we include all of the engines listed above without making a distinction between recreational and commercial applications. However, as a shorthand for this document, we are using ''recreational marine engines'' to mean recreational marine diesel engines and all of the gasoline SD/I engines.

Boat builders could also be affected by this emission control program. If engine changes significantly increase the external size, increase heat rejection, or reduce the power of the engine, boat builders could have to change the packaging of the engine in the vessel. Engine builders may raise the price of the engine to boat builders to cover the increased costs of developing, certifying and building new compliant engines. Also we are requesting comment on evaporative emission control which could affect boat designs.

B. Technology

1. What Technologies Appear To Be Available for Recreational Marine Diesel Engines?

We anticipate that significant emissions reductions from recreational marine diesel engines can be achieved primarily with technology that will be applied to land-based nonroad engines and commercial marine engines. Much of this technology already has been established in highway applications and is being used in some land-based nonroad and marine applications.

If emissions standards were not to go into place until the 2005–2006 time frame, engine manufacturers would have substantial lead time for developing, testing, and implementing emission control technologies. This lead time, coupled with the opportunity to use emission control technologies already developed for land-based nonroad engines, should allow time for a comprehensive program to integrate the most effective emission control approaches into the manufacturers' overall design goals related to durability, reliability, and fuel consumption. We request comment on the amount of lead time that would be appropriate for emission standards for recreational marine diesel applications.

Engine manufacturers have already shown some initiative in producing limited numbers of low-NO_X marine diesel engines. More than 80 of these engines have been placed into service in California through demonstration programs.[58] [59] Through the demonstration programs, we were able to gain insight into what technologies can be used to achieve significant emission reductions. Emission data from these engines supported adoption of emission standards for commercial marine diesel engines (see Table V–1).

Highway engine manufacturers have been the leaders in developing and applying new emission control technology for diesel engines. Because of the similar engine designs in land-based nonroad and marine diesel engines, we expect that much of the technological development that has led to lower emitting highway engines can be transferred or adapted for use on land-based nonroad and marine engines. Much of the improvement in emissions

[52] *See* 59 FR 55929 (November 9, 1994).

[53] *See* 61 FR 52088 (October 4, 1996).

[54] *See* 63 FR 56968 (October 23, 1998).

[55] *See* 63 FR 68508 (December 11, 1998).

[56] *See* 63 FR 28309 (May 22, 1998).

[57] *See* 64 FR 73300 (December 29, 1999).

[58] Memorandum from Jeff Carmody, Santa Barbara County Air Pollution Control District, to Mike Samulski, U.S. Environmental Protection Agency, ''Marine Engine Replacement Programs,'' July 21, 1997 (Docket A–97–50; document II–G–10).

[59] Facsimile from Eric Peterson, Santa Barbara County Air Pollution Control District, to Mike Samulski, U.S. Environmental Protection Agency, ''Marine Engine Replacement Programs,'' April 1, 1998 (Docket A–97–50; document II–D–14).

from these engines comes from ''internal'' engine changes such as variation in fuel injection variables (injection timing, injection pressure, spray pattern, rate shaping), modified piston bowl geometry for better air-fuel mixing, and improvements intended to reduce oil consumption. Introduction and ongoing improvement of electronic controls have played a vital role in facilitating many of these improvements.

Other technological developments that are expected to be used on land-based nonroad engines would require a greater degree of development before they could be applied to marine diesel engines. Turbocharging is widely used now in marine applications because it improves power and efficiency by compressing the intake air. Turbocharging may also be used to decrease particulate emissions in the exhaust. Today, marine engine manufacturers generally have to rematch the turbocharger to the engine characteristics of the marine version of a nonroad engine and often will add water cooling (jacketing) around the turbo housing to keep surface temperatures low. Once the Tier 2 nonroad engines are available to the marine industry, matching the turbochargers for the engines would be an important step in achieving low emissions.

Aftercooling is a well established technology that can be used to reduce NO_X by reducing the temperature of the charge air after it has been heated during compression. Reducing the charge air temperature directly reduces the peak cylinder temperature during combustion, which is the primary cause of NO_X formation. Air-to-water and water-to-water aftercoolers are well established for land-based applications. For engines in marine vessels, there are two different types of aftercooling used: jacket-water and raw-water aftercooling. With jacket-water aftercooling, the coolant to the aftercooler is cooled through a heat exchanger by ambient water. This cooling circuit may be either the same circuit used to cool the engine or a separate circuit. By moving to a separate circuit, marine engine manufacturers would be able to achieve further reductions in the intake charge temperature. This separate circuit could result in even lower temperatures by using raw water as the coolant. This means that ambient water is pumped directly to the aftercooler. Raw-water aftercooling is currently being used widely in recreational applications. Because of the access that marine engines have to a large ambient water cooling medium, we anticipate that marine CI engine manufacturers will largely achieve reductions in NO_X emissions through the use of aftercooling.

To meet potential emission standards, recreational marine diesel engine manufacturers could use many of the strategies discussed above. Electronic controls also offer great potential for improved control of engine parameters for better performance and lower emissions. Unit pumps or injectors would allow higher-pressure fuel injection with rate shaping to carefully time the delivery of the whole volume of injected fuel into the cylinder. Marine engine manufacturers should be able to take advantage of modifications to the routing of the intake air and the shape of the combustion chamber of nonroad engines for improved mixing of the fuel-air charge. Separate circuit jacket- and raw-water aftercooling will likely gain widespread use in turbocharged engines to increase performance and lower NO_X. We request comment on the technological approaches discussed here and on other emission control technology that could effectively be used on recreational marine diesel engines. We also request comment on the costs associated with these technologies.

2. What Technologies Appear To Be Available for Spark Ignition SD/I Marine Engines?

At least three primary technologies could be used by marinizers to reduce emissions from SD/I engines.[60] These three technologies are electronic fuel injection, exhaust gas recirculation, and two-way or three-way catalysts. Electronic control gives manufacturers more precise control of the air/fuel ratio in each cylinder thereby giving them greater flexibility in how they calibrate their engines. With the addition of an oxygen sensor, electronics give manufacturers the ability to use closed loop control which is especially valuable when a catalyst is used. Three-way catalysts operate best near stoichiometric conditions in the exhaust.

Exhaust gas recirculation can be used for meaningful reductions in NO_X. The recirculated gas acts as a diluent in the fuel-air mixture which reduces combustion temperature. These lower temperatures significantly reduce formation rate of NO_X, but HC is increased slightly due to lower temperatures for HC burn-up during the late expansion and exhaust strokes. Depending on the burn rate of the engine and the amount of recirculated gases, EGR can improve fuel consumption. Although EGR slows the burn rate (which tends to decrease peak power), it can offset this effect with some benefits for engine efficiency. EGR reduces pumping work since the addition of recirculated gas increases intake pressure. Because the burned gas temperature is decreased, there is less heat loss to the exhaust and cylinder walls. In effect, EGR allows more of the chemical energy in the fuel to be converted to useable work.

Most engines sold to the marine market are primarily designed for automotive use. Marinizers then take the basic engine blocks and adapt them to be better suited for the marine environment. These engines are generally already equipped with a port in the manifold for EGR. This port is capped because EGR is not currently used in marine engines. However, EGR has been used as an effective NO_X control strategy in automotive applications for more than 20 years. Today's automotive applications use levels of 15–17 percent EGR. Through the use of high swirl, high turbulence combustion chambers, manufacturers could increase the burn rate of the engine. By increasing the burn rate, the amount of EGR could be increased to 20–25 percent. In our lab, we calibrated a heavy-duty highway gasoline engine for emissions over the ISO E4 marine duty cycle.[61] We achieved a 47 percent reduction in NO_X without significantly changing HC or CO emissions. The result was 9.9 g/kW-hr $HC+NO_X$ and 24.3 g/kW-hr CO.

With regard to emissions reductions through catalytic control, we are considering various designs that involve packaging small catalysts in the exhaust manifold with only small changes in the size of the exhaust manifold. By placing the catalysts here, costs to the manufacturer may be reduced compared to a large catalyst downstream especially when considering the packaging of the system in a boat. Engine manufacturers water jacket the exhaust manifold to meet temperature safety protocol then mix the water into the exhaust to protect the exhaust couplings and muffle noise. By placing the catalyst in the exhaust manifold, it is upstream of where the water and exhaust mix. However, placing the catalyst in the exhaust manifold limits the catalyst size. Using a small catalyst,

[60] We use the term ''marinizers'' to mean manufacturers who take engine blocks designed for land-based applications and prepare them for marine applications.

[61] Memo from J. McDonald and M. Samulski, ''EGR Test Data from a Heavy-Duty Gasoline Engine on the E4 Duty Cycle,'' July 12, 1999.

in turn, limits potential emissions reductions. We request comment on the potential emission reductions available by a small catalyst placed in or directly adjacent to the exhaust manifold.

There have been concerns that aspects of the marine environment could result in unique durability problems for catalysts. The primary aspects that could affect catalyst durability are sustained operation at high load, salt water effects on catalyst efficiency, thermal shock from cold water coming into contact with a hot catalyst, engine vibration, and shock effects in rough water associated with marine applications.

Three-way catalysts may be an effective control strategy for gasoline marine engines. Three-way catalysts act as both an oxidation catalyst to reduce HC, CO and as a reduction catalyst to control NO_X. They are most effective when coupled with an oxygen sensor and a feedback loop to maintain a stoichiometric exhaust mixture. As an alternative, a two-way oxidation catalyst could be used effectively with less precise control of the air fuel ratio in the exhaust. Today's catalysts perform well at temperatures higher than would be seen in a marine exhaust manifold and have been shown, in the lab, to withstand the thermal shock of being immersed in water. Use of catalysts in automotive, motorcycle, and hand-held equipment has shown that catalysts can be packaged to withstand the vibration in the exhaust manifold in varied applications. We request comment on how the operation of marine engines would affect catalyst durability.

The key to using this technology in these marine applications is to ensure that salt water does not reach the catalyst so that salt does not accumulate on the catalyst and reduce its efficiency. Placement of the catalyst close to the exhaust manifolds may help protect it from salt water. Manufacturers already strive to design their exhaust systems to prevent water from reaching the exhaust ports. If too much water reaches the exhaust ports in today's designs, significant durability problems would result from corrosion or hydraulic lock. We request comment on potential design modifications which could eliminate or significantly minimize water intrusion into the exhaust which could deteriorate the performance of the catalyst.

In highway applications, catalysts are designed to operate in gasoline vehicles for more than 100,000 miles. This translates to about 5,000 hours of use on the engine/catalyst. We estimate that, due to low annual hours of operation (50–100 hours/year), the average running time of SD/I engines is less than one-third of this value. This is another reason we believe catalysts are likely to be durable in marine applications. However, unlike cars, boats often experience shock effects from waves even when the engine is not running which could affect the durability of a catalyst that was not packaged appropriately.

We have been working with the U.S. Coast Guard to identify potential safety problems with using catalysts in marine applications. The Coast Guard has told us that they have two concerns. First, they want to make sure that any additional heat load in the engine compartment will not add to the risk of fires, other safety hazards, or other detrimental impacts on the engine or components. Second, they want to make sure that exhaust systems with catalysts will not lead to CO leaks due to additional joints in or maintenance of the exhaust system.

Through a joint effort with the California Air Resources Board (ARB), Southwest Research Institute (SwRI), engine manufacturers/marinizers, catalyst manufacturers, and a marine exhaust manifold manufacturer, we are in the process of developing and testing a comprehensive emissions control system on a SD/I engine. This system includes both EGR and catalyst technology. The goal of this testing is proof of concept, but as part of this testing, temperatures and pressures relevant to safety, durability, and performance will be measured. Also, we are focusing on an exhaust manifold design that will prevent water reversion to the catalyst.

We request comment on the feasibility of applying electronic fuel injection, exhaust gas recirculation, and catalysts on SD/I engines and on other technology that could effectively be used to reduce emissions from these engines. We also request comment on the costs and corresponding potential emission reductions from using such technology, as well as the potential effects on engine performance, safety and durability using these technologies.

C. Standards and Program Approaches

1. Recreational Marine Diesel Engines

One approach for reducing emissions from recreational CI marine engines would be to propose standards similar to the Tier 2 standards for commercial CI marine engines. The commercial marine emission limits are presented in Table V–1 and are based on the ISO E3 duty cycle. For recreational marine engines the ISO E5 duty cycle may be more appropriate because it is designed for smaller craft. Recreational CI marine engines can likely use the same technologies projected for the Tier 2 commercial marine standards. Many recreational CI marine engines are already using these technologies including electronic fuel management, turbocharging, and separate circuit aftercooling. In fact, because recreational engines have much shorter design lives than commercial engines, it is likely to be easier to apply raw water aftercooling to these engines.

TABLE V–1.—EMISSION STANDARDS FOR COMMERCIAL MARINE DIESEL ENGINES OVER 37 kW

Subcategory	$HC+NO_X$ g/kW-hr	PM g/kW-hr	CO g/kW-hr
disp < 0.9	7.5	0.40	5.0
0.9 ≤ disp < 1.2	7.2	0.30	5.0
1.2 ≤ disp < 5.0	7.2	0.20	5.0

Engine manufacturers will generally increase the fueling rate in recreational engines, compared to commercial engines, to gain power from a given engine size. This extra power from a given sized engine helps bring a planing vessel on to the water surface and increases the maximum vessel speed without increasing the weight of the vessel. This difference in how recreational engines are designed and used has an effect on emissions. However, as discussed in the technology section below, emission data suggest that recreational marine diesel engines can meet the levels required for commercial marine engines. We request comment on the appropriateness of the commercial marine emission limits for recreational marine engines. We also

request comment on the appropriate test duty cycle for these limits.

Diesel engine manufacturers have commented that they would need time after the commercial marine standards go into place to transfer technology from commercial to recreational marine engines. The standards for the commercial marine rule go into effect in the following model years by engine cylinder displacement: 2004 for 0.9 to 2.5 liters per cylinder, 2005 for smaller engines, and 2007 for larger engines. These dates are after those for the nonroad land-based standards which gives manufacturers time to transfer the land-based technology to marine applications.

An implementation date of 2005 for engines with displacement less than 2.5 liters/cylinder would give a year of lead time beyond the emission standards for commercial engines. However, this lead time may not be necessary because much of the technology that could be used to reduce emissions is already used in some recreational marine diesel engine models; these engines would just need to be calibrated for reduced emissions. Many recreational marine diesel engines with displacement over 2.5 liters/cylinder in many cases also already use the anticipated emission-control technologies. An implementation date of 2007 for these engines may therefore provide adequate lead time, even though the emission standards for commercial engines start at the same time. We request comment on appropriate implementation dates for recreational marine diesel engines.

2. SD/I Marine Engines

In determining potential $HC+NO_X$ standards for sterndrive and inboard SI marine engines, we will be evaluating emission reductions that can be achieved using electronic fuel injection, exhaust gas recirculation, and catalysts designed to work in marine applications. Catalyst exhaust systems designed for marine applications would have to ensure that salt-water did not reach the catalyst. In addition, it would be preferable for the exhaust system to be compact so that it would fit in current boat designs. This may necessitate locating a small catalyst in the exhaust manifold or directly adjacent to it, limiting the catalyst size and therefore its ability to reduce engine emissions.

Even if only a small, low-efficiency catalyst could be packaged into SD/I exhaust systems, an $HC+NO_X$ standard of 5–7 g/kW-hr may be feasible based in the ISO E4 duty cycle. Given the information in Table V–1, a standard of 7.2 g/kW-hr for $HC+NO_X$ would provide some level of equity of emission control for gasoline and diesel engines. However, if larger, more efficient catalysts were used such as in automotive applications, much larger emission reductions could be achieved. In its September 19, 2000 workshop, the California Air Resources Board proposed standards of 9.4 g/kW-hr $HC+NO_X$ and 134 g/kW-hr CO in 2003 and 4 g/kW-hr $HC+NO_X$ and 50 g/kW-hr CO in 2007. We request comment on the potential use of larger, more efficient catalysts in SD/I applications and on appropriate emission limits.

We are in the process of developing and testing a catalyst system for SD/I engines, but we do not have data from the tests at the time of this notice. Our projected emission reductions from catalyst systems are based on our evaluation of information from catalyst manufacturers and observations of the success of catalytic control in land-based applications. Because we do not yet have complete data, we request comment on basing emissions standards on technology packages with and without catalytic control. Using electronic fuel injection and exhaust gas recirculation, an emission limit of 9–10 g/kW-hr of $HC+NO_X$ may be appropriate.

We will be evaluating varying levels of CO control. With the application of electronic fuel injection and electronic control, CO from SD/Is can be reduced, potentially to the range of 40–50 g/kW-hr. If manufacturers can produce engines that achieve these CO emission reductions over many years of operation, this may reduce the exposure of individual boaters to elevated ambient CO concentrations. In particular, this could reduce the occurrence of CO poisoning from people on or swimming near a boat while the engine is idling. Because reducing CO emissions could help reduce incidents of CO poisoning among boaters, we are also considering the need for a CO standard which would achieve significant CO reductions. With a catalyst, CO could be reduced further, perhaps to the range of 15–20 g/kW-hr. At a minimum, we see no reason for expecting emissions to increase. Therefore, we request comment on capping CO emission at baseline levels, approximately 130 g/kW-hr, to prevent backsliding. We also request comment on the technical feasibility and benefits from reducing CO levels and on what appropriate CO standards would be for SI SD/I engines.

We are considering the 2005 or 2006 time frame for the implementation of standards for SD/I engines. These dates are similar to the ones discussed above for recreational marine diesel engines. However, we recognize that SD/I marinizers would need time to apply new technologies to their engines and optimize the systems for emissions control. Depending on the level of eventual standards, this may be especially difficult for SD/I manufacturers because they may need to apply technologies, such as EGR and catalysts, that they have never applied to their engines. Therefore, we request comment on what lead time would be appropriate for SD/I engines.

D. Additional Program Considerations

1. Not-To-Exceed Requirements

Our goal is to achieve control of emissions over the broad range of in-use speed and load combinations that can occur on a recreational marine engine so that real-world emission control is achieved, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective standard and an easily implemented test procedure. Therefore we are requesting comment on extending the not-to-exceed requirements in place for commercial marine engines to recreational marine engines.

The not-to-exceed (NTE) concept includes an area under the torque map where an engine could reasonably be expected to operate in use. Within this area the engine can not exceed a fixed limit. The limit may be different for different areas of the NTE zone. The NTE zone not only includes a wide range of operation, but also a wide range of ambient conditions.

We expect that NTE requirements for recreational CI marine engines would be very similar to those for commercial CI marine engines (64 FR 73300) because the engines are similar. However, the limits may need to be different within the NTE zone due to differences in the engine applications. For example, a higher limit near full power may be necessary for recreational engines. For SI engines, the NTE zone would likely need to be a different shape to coincide with the differences between the ISO E5 and ISO E4 test procedures. Also, because EGR technology is not as efficient at high power as at lower power, a higher limit may be necessary at high power. We request comment on how the NTE concept could be applied to recreational marine engines. We also request comment on alternative approaches for ensuring real world emission control from recreational marine engines.

2. Evaporative Emissions

We request comment on whether or not we should propose evaporative emission requirements for recreational marine engines and what those requirements should be. Vessels using gasoline marine engines emit high amounts of volatile hydrocarbons per gallon of fuel consumed. According to our calculations, these evaporative emissions are several times higher than exhaust HC emissions. For diesel engines, evaporative emissions are very low due to the low vapor pressure of diesel fuel.

When the fuel is subject to increasing temperatures, such as daily temperature variation or engine heat, lighter hydrocarbon molecules evaporate and, if not stored or trapped in some fashion, will escape into the atmosphere. Marine fuel tanks are vented to the atmosphere to prevent pressure build up in the tank. Vapor levels on a boat can be so high that, for fire safety reasons, blowers are often needed to remove gasoline vapors from the engine compartment prior to starting the engine. Also vapors are displaced from the gas tank to the atmosphere during refueling. Finally, some emissions come from spillage during refueling.

In automotive applications, vapors generated in the fuel system are passed through a canister designed to capture evaporated hydrocarbons. When the engine is running, these hydrocarbons are drawn back into the engine and burned. However, this emission control technology would not be practical for marine applications. A boat may sit for weeks without being used while typical automotive canisters are only designed to capture a few hot days worth of evaporative emissions. After this amount of time, the canister must be purged to the engine. A canister/fuel system that could collect weeks worth of vapors and burn them in a few hours of operation probably would not be practical due to the canister size required.

Still, there may be practical alternatives to a canister system for boats. One such system could be a bladder-type fuel tank such as those used in race cars. The bladder contracts as the fuel is used to prevent a vapor space from forming.

Another technology that could reduce evaporative emissions to a lesser degree are non-permeable fuel lines. By replacing rubber fuel lines with non-permeable lines, the evaporative emissions through the fuel lines can be prevented. An added benefit is that these non-permeable lines are non-conductive and can prevent the buildup of static charges. Although non-permeable lines are used in automotive applications, these fuel lines would have to meet Coast Guard specifications for flame resistance and flexibility to be used in marine applications. We request comment on if non-permeable fuel lines exist that would meet the Coast Guard specifications and what their cost would be.

Currently, fuel systems on boats are vented to the atmosphere to prevent pressure buildup. The Coast Guard requires that fuel systems not be pressurized. If a low-pressure (2 psi) pressure relief valve were used with a closed system, much of the evaporative emissions could be reduced. This would still prevent the fuel system from building up too much pressure. We request comment on the effectiveness of this strategy with respect to ambient temperature, especially on hot days when the fuel tank pressure may be higher. Note that any eventual requirements related to fuel system pressure would need to be consistent with Coast Guard policies and requirements.

We request comment on safe pressures in fuel tanks and what typical fuel tank pressures would be if they were not vented to the atmosphere. We also request comment on the cost and effectiveness of non-permeable fuel lines, pressure relief valves, and other systems for reducing evaporative emissions. We also request comment on potential strategies for reducing emissions due to refueling or spillage. We request comments on any evaporative emission control systems such as those described above as well as comment on potential strategies for reducing emissions due to refueling or spillage.

Additionally, we request comment on how we could structure provisions to confirm the effectiveness of these systems. We would prefer to set up a performance-based standard such as the test procedures already in place for automobiles because it gives a better indication of control effectiveness that a design-based standard and it gives more design flexibility to the manufacture. However, we request comment on appropriate performance-based test procedures and on an appropriate design-based requirement.

3. Crankcase Emissions

We are requesting comment on whether or not to require that new recreational marine engines be built with closed crankcases to eliminate crankcase emissions. Crankcase controls have been required on cars and trucks. Controlling crankcase vapors requires a fairly simple and inexpensive technological strategy. A line is routed from the crankcase to the intake manifold with a pressure control valve which will prevent crankcase overpressure and will prevent air from flowing into the crankcase. Some SI marine engine already route crankcase vapor to the air intake to minimize vapor buildup in the engine compartment.

For turbocharged diesel engines, there is some concern that routing the crankcase vapor upstream of the turbocharger could foul the turbocharger. In addition, it would be more costly to route the low pressure crankcase vapor downstream of the turbocharger because an extra pump would be necessary. An alternative would be to allow turbocharged recreational compression-ignition marine engines to be built with open crankcases, provided the crankcase ventilation system is designed to allow crankcase emissions to be measured. For engines with open crankcases, we could require crankcase emissions to be either routed into the exhaust stream to be included in the exhaust measurement, or to be measured separately and added to the measured exhaust mass. These measurement requirements might not add significantly to the cost of testing, especially where the crankcase vent is simply routed into the exhaust stream prior to the point of exhaust sampling. This concept is consistent with our previous regulation of crankcase emissions from such diverse sources as commercial marine engines, locomotives and passenger cars. We request comment on the above concepts.

4. Regulatory Flexibility

Marinizers are engine manufacturers that take land-based engines and convert them to be used in marine applications. In some cases, marinizers use certified land-based engines and make changes without changing their emission levels. We consider these marinizers to be ''engine dressers,'' and we believe that forcing these manufacturers to certify their engines may be unnecessary. We intend to offer similar engine dresser provisions for recreational marine engine marinizers as exist for commercial marine engine marinizers who are not required to certify (40 CFR part 94). We request comment on these provisions as they apply to recreational marine engine marinizers.

The scope of this advance notice also includes a number of engine marinizers that have not been subject to our regulations or certification process and would not qualify as engine dressers.

The majority of these marinizers are small businesses for which a typical regulatory program may be overly burdensome. One challenge of this rule is to implement a flexible regulatory program while still ensuring significant emission reductions. We request comment on appropriate regulatory flexibility strategies for small volume engine marinizers that will minimize harmful impact on the environment.

We request comment on what should be the definition of a small volume engine manufacturer/marinizer for the purpose of potential regulatory flexibility. The Small Business Administration defines a small business (manufacturing internal combustion engines) as one that employs less than 1000 people. Because the purpose of the regulatory flexibility is to reduce the burden on companies for which fixed costs cannot be distributed over a large number of engines, we believe that the small volume engine manufacturer definition should also consider the number of engines for sale in the U.S. in a year. This production count would include all engines (automotive, other nonroad, etc.) and not just recreational marine engines. Based on confidential sales information supplied by engine marinizers and our own evaluations of certification and development costs, we estimate that the upper limit for the numbers of engines that a company could produce and still be considered a small volume engine manufacturer might be in the range of 8,000 to 12,000 units per year. This would include the majority of marinizers. To establish this threshold, we would make an assessment of the ability of these companies to amortize development costs over smaller sales volumes.

The large number of boat builders and their relative inexperience with emission control requirements also suggest a need for a flexible implementation process. Although boat builders would not be directly subject to emission standards under a potential program unless evaporative emission control were required, it would still be possible for them to need to redesign the engine compartments on some boats if engine designs were to change significantly. We request comment on how to best determine the extent to which engine technologies discussed above would necessitate changes in boat design. We also request comment on regulatory flexibility strategies for small volume boat builders that will minimize harmful impact on the environment.

We request comment on what should be the definition of a small volume boat builder for the purpose of potential regulatory flexibility. Because the flexibility is designed to reduce the burden on companies for which fixed costs cannot be distributed over a large number of vessels, we believe it may be appropriate to include in the definition of a small volume boat builder an upper limit on the production of boats for sale in the U.S. in one year. This production count would include all power craft recreational boats. We request comment on this approach.

We have been in contact with several small volume engine marinizers and boat builders in an attempt to develop concepts that would reduce the burden of emissions standards while minimizing environmental loss. In fact, we convened a Small Business Advocacy Review Panel under section 609(b) of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. To date, these efforts have identified several flexibility concepts for small volume engine manufacturers and for small volume boat builders. We presented several flexibility concepts to small-business representatives during the SBREFA process.[62] These concepts are listed in Table V–2. We request comment on the appropriateness of these ideas and on others for minimizing burden on small businesses while still reaching the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy, and safety factors.

TABLE V–2.—SMALL BUSINESS REGULATORY FLEXIBILITY CONCEPTS FOR RECREATIONAL MARINE

Small volume engine marinizers	Small volume boat builders
Broaden engine families	Percent of production exemption.
Minimize compliance requirements	Small volume allowance.
	Existing inventory and replacement engine allowance.
Expand engine dresser flexibility	
Design-based certification	Hardship provisions
Delay standards for 5 years	
Hardship provisions	
Use of emission credits	

[62] ''Preliminary EPA Staff Assessment of Small Business Flexibility Concepts,'' June 16, 1999, Docket A–2000–01, document II–B–03.

5. Definition of Recreational CI Marine Engines

When we finalized standards for commercial marine engines last year, we included a definition of recreational compression-ignition marine engines. This was based on the U.S. Coast Guard definition of recreational vessels. This definition states that a compression-ignition propulsion marine engine intended by the manufacturer to be installed on a recreational vessel and labeled as a recreational engine would be considered recreational for EPA regulations in 40 CFR part 94. A recreational vessel is one that is intended by the vessel manufacturer to be operated primarily for pleasure but does not include the following vessels:

—Vessels less than 100 gross tons that carry six or more paying passengers
—Vessels greater than 100 gross tons that carry one or more paying passengers
—Vessels used solely for competition

Diesel engine manufacturers have since commented that they would like to see a less restrictive definition of recreational vessel. Their proposed definition is as follows: ''Recreational marine engine means a propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel. Recreational vessel means a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure.'' We request comment on the appropriate definition of a recreational marine engine.

6. Useful Life

When we set emission standards, we require that manufacturers produce engines that comply over their full useful life. For recreational marine engines, a useful life that lasts either ten years or until the engine accumulates at least 500 operating hours (or some other value of hours specified in a certificate of conformity), whichever occurs first, may be appropriate. In general, we would expect that the regulatory useful life should be at least as long as the operating lifetime for which the engine is designed. We request comment on this view.

Our current view that the appropriate minimum useful life may be at least 500 hours is based on manufacturer comments that typical recreational marine engines are used about 50 hours per year and for at least 10 years. However, Coast Guard survey data suggests that typical recreational marine engines are used about 100 hours per

year.[63] In addition, we expect that typical recreational marine diesel engines are used more than this, especially those rated at several hundred horsepower. Purchasers of the more powerful marine diesel engines usually choose them over lower cost gasoline engines because diesel engines are generally designed to be more durable. Actual useful lives of existing engines are likely to vary with respect to application as well. Thus, we could propose a series of minimum useful life values based on rated application, engine cycle (*e.g.,* spark-ignited or diesel), or rated horsepower. However, we request information on in-use engine life and comment on the appropriate emissions compliance useful life for SI engines and CI engines; these useful life values may vary with engine size, especially for diesel engines.

In our emissions inventory calculations presented earlier in this document, we used a function of the engine population, load factors, annual hours of use, rated power, emission factors, turnover, and growth rates. For CI engines we used 200 hours per year and for SD/I engines, we used 48 hours per year. We are interested in more information, especially data, on the appropriateness of these estimates. Studies and industry comments have shown a wide range of average annual use—from 50 to 500 hours per year. We request information, especially reliable field data, on the annual and lifetime operating hours for these engines which may depend on SI versus CI design, engine size, and application.

7. Averaging, Banking, and Trading Credit Programs

We are considering an emissions averaging, banking and trading (ABT) program for recreational marine engines. This is a voluntary program which would allow a manufacturer to certify one or more engine families at emission levels above the applicable emission standards, provided that the increased emissions are offset by one or more engine families certified below the applicable standards. The average of all emissions for a particular manufacturer's production would have to be at or below the level of the applicable emission standards. In addition, credits could be traded with other companies or banked for future use.

An ABT program is an important factor that EPA takes into consideration in setting emission standards that are appropriate under section 213 of the Clean Air Act. ABT would allow us to consider a lower emissions standard, or one that otherwise results in greater emissions reductions, because ABT reduces the cost and improves the technological feasibility and cost-effectiveness of achieving a standard. For example, it could help to ensure the attainment of the standards earlier than would otherwise be possible. Manufacturers gain flexibility in product planning and the opportunity for a more cost-effective introduction of product lines meeting a new standard. ABT also creates an incentive for the early introduction of new technology, which allows certain engine families to act as trail blazers for new technology. This can help provide valuable information to manufacturers on the technology before manufacturers need apply the technology throughout their product line. This early introduction of clean technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies.

For recreational marine diesel engines, an ABT program would be similar to the one for commercial marine engines. We request comment on all aspects of an ABT program that would apply for recreational marine diesel engines.

We are concerned that an ABT program may not be appropriate for SI SD/I marine engines for three primary reasons. First, there are many small businesses which produce SI engines for the recreational marine market. There are also very few large businesses producing SI engines for this market. While the large businesses tend to have broad product offerings and could readily take advantage of the provisions of an ABT program, the small businesses tend to have much narrower product lines and would therefore be unlikely to benefit from ABT provisions. We are concerned that this situation would allow the large businesses a competitive advantage.

Similarly, we are concerned that most manufacturers of recreational SI engines do not have a broad enough product line to take advantage of an ABT program. Therefore, it may not be useful to the majority of businesses.

Third, the emission control technology discussed above appear to be equally applicable to all engines. Therefore, an ABT program may not be necessary except, perhaps, as a tool to help phase-in new technology. Adopting an ABT program in the long term may make sense if we were to conclude that a more stringent standard is feasible at least for some engines. We request comment on whether we should consider an ABT program for SI engines, and what, if any, restrictions we should place on such a program.

8. Applicability of MARPOL Annex VI

On September 27, 1997, the International Maritime Organization (IMO) adopted a new Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and opened the Annex for acceptance by its members. This Annex, which contains regulations for the prevention of air pollution from ships, will go into force internationally one year after fifteen countries, representing at least 50 percent of the gross tonnage of the world's merchant shipping fleet, have ratified it. The Annex will acquire the force of law in the United States after it goes into force internationally and it is ratified by the United States, following approval of the Senate.

Regulation 13 of Annex VI requires that each diesel engine with a power output of more than 130 kW which is installed on a ship constructed on or after 1 January 2000, or each diesel engine with a power output of more than 130 kW which undergoes a major conversion on or after 1 January 2000 meet the NO_X limits described by the following formula:

17.0 g/kW-hr when n is less than 130 rpm

$45.0 * n^{(-0.2)}$ g/kW-hr when $130 \leq n < 2000$ rpm

9.8 g/kW-hr when $n \geq 2000$ rpm

Where n is rated engine speed (crankshaft revolutions per minute)

One of the issues that will be considered in our notice of proposed rulemaking is how these emission limits affect recreational engines and vessels. Because recreational vessels are included in the MARPOL definition of ''ship,'' prudent recreational vessel manufacturers should have begun installing MARPOL-compliant engines in their newly-constructed vessels on January 1, 2000, even though the Annex has not yet gone into force.[64] This is because the Annex may be enforceable retroactive to January 1, 2000 once it goes into effect internationally. To facilitate this process, EPA established a voluntary compliance program whereby engine manufacturers may obtain a Statement of Voluntary Compliance from EPA after they provide evidence

[63] ''1998 National Recreational Boating Survey Data Book,'' JSI Research & Training Institute, prepared for the U.S. Coast Guard, February 2000.

[64] Article 2 of MARPOL 73/78 defines ''ship'' as ''a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.''

that their engine meets the Annex VI NO_X limits.[65]

To help us prepare our proposal for recreational engine emission requirements, we request comment on several questions. First, we request input on the extent to which recreational vessel builders are aware of the MARPOL requirements for marine diesel engines, and the extent to which they are attempting to comply with them. Second, we request comment on how many times a vessel with a marine diesel engine over 130 kW can be expected to change owners over its life. This information is important for compliance purposes. Third, we request comment on whether meeting the Annex VI NO_X limits will interfere with an engine manufacturer's ability to meet the more stringent national recreational marine diesel emission standards under consideration.

9. Harmonization With the European Commission

The European Commission has proposed emission limits for recreational marine engines, including both diesel and gasoline engines. These requirements would apply to all new engines sold in member countries. The numerical emission limits, shown in Table V–2, consist of the Annex VI NO_X limit for small marine diesel engines and the rough equivalent of Tier 1 nonroad emission levels for HC and CO. Emission testing is to be conducted using the ISO D2 duty cycle for constant-speed engines and the ISO E5 duty cycle for all other engines. Table V–2 also includes the proposed limits for gasoline engines tested on the ISO E4 duty cycle.

Industry and others have commented to us on the value of harmonization of emission standards. Manufacturers who sell engines in several countries can minimize costs by designing to a single set of standards. In setting standards under section 213 of the Act, EPA is required to consider technology, cost, energy, and other factors to achieve the greatest degree of emissions reductions achievable. We are concerned that these standards would do no more than cap emissions at baseline levels and are not the kind of appropriate technology-forcing standards that would allow us to achieve the greatest achievable reductions from this category. According to our data on 20 recreational CI marine engines (tested for both NO_X and PM) and 10 SI SD/I engines, average baseline emission levels already meet the proposed European limits. These baseline averages are included in Table V–3. We request comment on the level of stringency of the proposed European emission limits.

TABLE V–3.—PROPOSED EUROPEAN EMISSION LIMITS AND EPA BASELINE DATA FOR RECREATIONAL MARINE ENGINES (G/KW-HR)

Pollutant	CI limit[a]	CI baseline	SI limit[b]	SI baseline
NO_X	9.8	8.9	15	9.2
PM	1.4	0.2	.....	.....
HC	1.5	0.3	6.4	5.7
CO	5.0	1.3	152	145

[a] HC limit increases slightly with increasing engine power rating.
[b] For 300 kW engine; HC and CO limits increase slightly with decreasing power rating.

10. Consumer Labeling

We request comment on the need for, effectiveness of, and alternatives to a consumer labeling program. The purpose of this program would be to educate consumers so that they could make informed decisions concerning engine emissions when they purchase a boat. One example of a consumer labeling program is the California Air Resources Board's requirement that personal watercraft and outboard engines sold in California starting in 2001 be labeled as either low, very-low, or ultra-low depending on their emission levels. We request comment on whether or not a program such as this should be voluntary or mandatory. We also request comment on how this should be implemented considering that most boats and engines are produced by separate manufacturers.

VI. Large Spark Ignition Engines

A. Background

1. What Engines Are Included in This Rulemaking?

This section applies to most nonroad spark-ignition engines rated over 19 kW (''Large SI engines''). These engines power equipment such as forklifts, sweepers, pumps, and generators. This would include marine auxiliary engines, but not marine propulsion engines or engines used in snowmobiles, motorcycles, or other recreational applications. The applications not addressed in this section are addressed elsewhere in this document.

Our most recent rulemaking for nonroad diesel engines finalized a definition of ''compression-ignition'' that was intended to include diesel-derived natural gas engines under that program.[66] However, according to the manufacturers of these engines, they do not meet the definition of compression-ignition engines. All nonroad engines are defined as either compression-ignition or spark-ignition engines. So, if these natural gas engines are not subject to emission standards for nonroad diesel engines, they will instead be covered by the emission standards for Large SI engines. We are currently reviewing the claims of these manufacturers regarding how their engines should be classified. We request comment on whether we should revise the definitions that differentiate between these types of engines.

Most Large SI engines have a total displacement greater than one liter. The design and application of the few Large SI engines currently being produced with displacement less than one liter are very similar to those of engines rated below 19 kW, which are typically used for lawn and garden applications. As described in the most recent rulemaking for these smaller engines, we intend to propose that manufacturers may certify engines above 19 kW with total displacement of one liter or less to the requirements we have already adopted in 40 CFR part 90 for engines below 19 kW.[67] These engines would then be exempt from the requirements contemplated in this document. This

[65] See the fact sheet ''Frequently Asked Questions: MARPOL 73/78 Annex VI Marine Diesel Engine Requirements,'' EPA420–F–99–038, October 1999, www.epa.gov/otaq/marine.htm.

[66] See 63 FR 56968 (October 23, 1998).

[67] See 65 FR 24268 (April 25, 2000).

would be consistent with the California ARB rulemaking. This approach would allow manufacturers of small air-cooled engines to certify their engines rated over 19 kW with the program adopted for the comparable engines with slightly lower power ratings.

We are concerned that treating all engines less than one liter as Small SI engines may be inadequate. For example, lawn and garden engines generally don't use turbochargers or other technologies to achieve very high power levels. However, it may be possible for someone to design an engine under one liter with unusually high power, which would more appropriately be grouped with other Large SI engines rather than with Small SI engines. To address this concern, we may propose a maximum power level for engines to qualify for treatment as Small SI engines. A power rating of 30 kW seems to represent a maximum reasonable power output that is possible from SI engines under one liter with technologies typical of lawn and garden engines. We request comment on the suggested power threshold and on any other approaches to addressing the concern for properly constraining this provision.

2. Who Makes Large SI Engines?

The companies producing Large SI engines are typically subsidiaries of automotive companies. In most cases, these companies modify car and truck engines for industrial applications. However, the Large SI industry has historically taken a much less centralized approach to designing and producing engines. Engine manufacturers often sell dressed engine blocks without manifolds or fuel systems. Fuel system suppliers have played a big role in designing and calibrating nonroad engines, sometimes participating directly in engine assembly. Several equipment manufacturers, mostly forklift producers, also play the role of an engine manufacturer by calibrating engine models and completing engine assembly.

Sales volumes are another important contrast with automotive production. Total Large SI engine sales are about 150,000 per year in the U.S. Sales are distributed rather evenly among several companies, so typical sales volumes for each company range generally from 10,000 to 25,000 engines per year. These sales volumes and the overall size of the companies limit the amount of research and development available to meet new emission standards.

3. What Is the Regulatory History?

Currently no federal emission standards exist for Large SI engines. We have, however, adopted successively more stringent standards for the automotive engines from which most Large SI engines are derived. Heavy-duty highway otto-cycle engines provide the most direct comparison. We have adopted emission standards for 2005 and later model year engines and proposed more stringent standards for 2007 and later model year engines. We request comment on the degree to which these technologies can be readily transferred or adapted to the counterpart nonroad engines.

The California ARB in 1998 adopted requirements that apply to new Large SI engines produced for California starting in 2001. We are considering similar requirements for these engines in the near term. In the longer term, we are also considering revised emission standards reflecting the emission reductions achievable with available technology, as described below.

While we have not yet set emission standards for this category of engines, the industry has some experience complying with standards through the requirements for forklifts set by Underwriters Laboratories.[68] These standards, which focus primarily on ensuring safety, require the industry to conduct testing and submit plans for approval, much like certifying to emission standards.

An additional important consideration for Large SI engines is the workplace air contaminant limits adopted by the Occupational Safety and Health Administration for CO and NO_2. Facility managers, not engine or equipment manufacturers, are responsible for meeting these limits. However, concerns for high indoor pollutant concentrations have created a small but distinct demand for aggressive emission controls on forklifts. These emission controls have become commonplace in Europe, even in the absence of emission standards.

B. Technology

Although Large SI engines are often derived from automotive engines, manufacturers have generally not incorporated the technological advances from cars and trucks. Most fuel systems in gasoline engines have carburetors with no feedback controls. LPG and natural gas engines typically use mixer technology that has changed little over the last several decades.

[68] ''Industrial Trucks, Internal Combustion Engine-Powered,'' UL558, ninth edition, June 28, 1996.

Some Large SI engine models have no automotive counterpart; many of these use air-cooling instead of a conventional radiator system. Air-cooled engines can use the same emission-control technologies as water-cooled engines, but they have operating characteristics that can increase the challenge of reaching low emission levels. For example, uneven heating of the engine block can cause distortion of the cylinders, increasing the possibility of hydrocarbon emissions from unburned fuel.

The standards for spark-ignition engines would apply for all fuel types. The majority of Large SI engines use liquefied petroleum gas (LPG). Engines running on LPG can use fuel cylinders or draw fuel directly from a pipeline. Gasoline is also used in many applications. Natural gas is less common, but serves in several niche markets.

The California ARB emission standards were developed based on the expected capabilities of three-way catalytic converters with electronic fueling systems to control emissions. A limited number of forklifts have been operating with these emission-control technologies for several years. In addition to controlling emissions, these emission-control technologies can significantly reduce fuel consumption. In a high-use application, the fuel savings can fully offset the increased price for the emission controls within one year or less. The redesigned engines also hold promise for improving engine performance, for example with more reliable starting and better torque characteristics.

Both EPA and California ARB have pursued emission testing to determine the capabilities of emission-control technologies for Large SI engines. This effort will also help us establish emission standards that correspond with the degree of emission control achievable from the anticipated technologies over the full operating life of industrial equipment. We believe that manufacturers can optimize their engines to substantially reduce CO, NO_X, and HC emissions at a reasonable cost with these redesigned engines.

C. Standards and Program Approaches

We are considering emission standards for Large SI engines based on what manufacturers can achieve with available technology. This may include a combination of near-term standards similar to California ARB's and long-term standards for optimized systems. In addition, we are considering new procedures for measuring emissions, including a transient duty cycle and

provisions to test for ''off-cycle'' emissions. These are described further in the following sections.

We do not presently intend to propose particulate matter emission standards because of the low levels of particulate matter associated with well maintained SI engines, as well as the substantial cost of technologies designed to regulate particulate matter directly from these engines. However, we expect that the incorporation of the projected emission-control technologies would reduce particulate matter emissions. This is similar to the approach we have taken for highway gasoline engines.

We request comment on this approach to setting standards, including the technology basis for controlling emissions, the combination of near-term and long-term standards, and the approach to addressing PM emissions.

1. Near-Term Emission Standards

We are considering near-term emission standards, including standards consistent with those adopted by California ARB. These standards are 4 g/kW-hr (3 g/hp-hr) for NMHC+ NO_X emissions and 50 g/kW-hr (37 g/hp-hr) for CO emissions. California ARB specifies the ISO C2 duty cycle for measuring emissions from variable-speed engines, and the ISO D2 duty cycle for testing constant-speed engines. The C2 duty cycle consists mostly of intermediate-speed points, while all the D2 test points are at rated speed. We request comment on establishing standards consistent with those in California, including using the duty cycles in the same way. We also request comment on the appropriateness of requiring certification testing on both of these duty cycles for engine models that may ultimately be used in both variable-speed and constant-speed applications.

California ARB adopted its emission standards based on the capabilities of three-way catalytic converters and electronically controlled fuel systems. These systems would be similar to those used for many years in highway applications, but not necessarily with the same degree of sophistication. Adopting California ARB's emission standards would allow near-term introduction of low-emission technologies for substantial emission reductions. The manufacturers would in this case also be able to more easily amortize their development costs by spreading these costs over larger production volumes.

The California ARB standards will be fully phased in by 2004. With a current expectation of completing an EPA final rule by September 2002, we believe manufacturers may have enough lead time to expand production of California-compliant engines to a nationwide market. If EPA and California standards were consistent, manufacturers may not need to do any additional development work or repeat any certification testing to meet the federal standards. We request comment on whether we should propose near-term standards for 2004 model year engines, or if manufacturers will need additional time to manage full production of low-emission engines.

As described for the long-term standards below, we are interested in the possibility of adopting standards based on total hydrocarbon emissions, rather than nonmethane hydrocarbon. We request comment on proposing standards based on total hydrocarbon measurement. This would potentially save manufacturers the expense of measuring methane emissions for certification, production-line, or in-use testing. Since methane is largely nonreactive in the atmosphere, we have often set emission standards excluding methane measurement. We could adjust the standard as needed to reflect typical methane concentrations in controlled engines. This would apply to gasoline- and LPG-fueled engines. Natural gas-fueled engines would continue to have a standard based on nonmethane emissions because the large majority of their total hydrocarbon emissions consist of methane. We request comment on this approach.

2. Long-Term Duty-Cycle Emission Standards

We believe that, given additional time, manufacturers would be able to optimize designs to control emissions to lower levels using the same emission-control technologies used to meet the near-term standards. Therefore, we are also requesting comment on more stringent emission standards using more robust measurement procedures, as described below.

General standards. Manufacturers have used electronically controlled fuel systems with three-way catalysts in automotive applications for many years. During this time, these systems and components have undergone substantial improvements in their ability to reduce emissions with minimal degradation during field operation. Recent testing by Southwest Research Institute shows that these systems can reduce NO_X, HC, and CO emissions by 90 percent or more over several thousand hours of normal operation.[69–70] While the test data help us select emission standards, we first need to address several open issues. These issues are summarized here and described in greater detail in the technical memoranda referenced in this document.

—*The combination of duty cycles for testing.* Emission measurements at Southwest Research Institute have shown that engines can achieve effective control on a wide variety of duty cycles, but that good performance on one duty cycle does not guarantee good performance on another. Thus, it is important that we select the appropriate duty cycles to provide a reasonable assurance that systems will control emissions when operating in the field.

—*Consideration of cold-start effects.* Engine emissions immediately after starting can be much higher than emissions from a hot engine. We need to determine the appropriate treatment of cold-start effects in the test procedure before we can propose emission standards.

—*The achievable precision of control software.* Electronic systems for automotive applications have reached a high level of sophistication for monitoring a wide variety of engine variables to maintain effective control of combustion and after treatment processes. While Large SI engine manufacturers can benefit from these developments, the cost and complexity of these systems at some point may no longer be appropriate for the more cost-sensitive, low-volume nonroad applications.

—*Fuel specifications.* As described further below, we need to evaluate in-use fuel quality before proposing fuel specifications for emission testing.

With this wide range of test and design variables, we request comment on long-term emissions standards ranging from 1.5 to 2.5 g/kW-hr (1 to 2 g/hp-hr) HC+ NO_X and from 4 to 10 g/kW-hr (3 to 7.5 g/hp-hr) CO. We are interested in comments as to potentially appropriate standards within these ranges, as well as comments on the appropriateness of the ranges themselves. The range of possible CO emission standards is especially wide because CO emission levels are sensitive to the degree of engine warm-up at the beginning of the test. This range of standards is based on test data showing the emission levels that Large SI engines can achieve with steady-state and transient duty cycles.[71] We request comment on the capability of Large SI

[69–70] ''Evaluation of Emissions Durability of Off-Road LPG Engines Equipped with Three-Way Catalysts,'' by Vlad Ulmet, Southwest Research Institute, November 2000, (Docket A–2000–01, document II–A–07).

[71] *See* ''Emission Data and Procedures for Large SI Engines'' for more information (Docket A–2000–01; document II–B–1).

engines to meet these emission levels, on the associated costs for these emission-control systems, and on the corresponding estimated emission reductions estimated to be achieved therefrom. We also request comment on the applicability of the underlying test data.

In another rulemaking, we are pursuing even lower emission levels for heavy-duty highway engines starting in 2008, including otto-cycle (or spark-ignition) engines. We have proposed changing these emission standards to 0.20 g/hp-hr (0.26 g/kW-hr) for NO_X emissions and 0.14 g/hp-hr (0.19 g/kW-hr) for NMHC emissions.[72] We request comment on whether Large SI engines would be able to apply the associated highway-engine technologies at a reasonable cost.

Emission standards for different fuel types. Most of the emission data on which we are likely to base the proposed emission standards was generated from engines using liquefied petroleum gas (LPG). We could take California ARB's approach of applying the same numerical emission standards regardless of fuel, except for the special treatment of methane emissions from natural gas engines. Gasoline engines have very different fuel systems than LPG or natural gas engines. Engines built from automotive engine blocks can readily adopt port fuel injection, which provides a great advantage over gaseous mixer technology in controlling emissions. Also, the emission levels described above are consistent with the requirements that apply to heavy-duty highway otto-cycle engines starting in 2005.

A possible exception to common emission standards may be for CO emissions. Uncontrolled CO emission levels from gasoline engines can be much higher than are typically found from LPG engines. We believe, however, that a separate CO standard for gasoline engines may not be necessary for two reasons. First, highway gasoline engines have been controlling CO emissions to lower levels for many years. Second, fuel systems and catalysts can be designed and calibrated for a very high CO conversion efficiency. We request comment on the need to accommodate higher CO emission levels from gasoline engines. Data supporting such an argument should include engine-out CO emission levels at stoichiometric operation and information regarding conversion efficiencies available for gasoline engine emission-control equipment. We also request comment on the advantages of having identical standards for all fuels.

Special cases. The above discussion applies generally to Large SI engines. However, there are special concerns that warrant further attention.

Air-cooled engines. Some air-cooled engines are designed to operate in applications where water-cooled engines may not function effectively. These engines are most commonly used in industrial saws or chippers where ambient dust levels prevent the use of radiators to cool the engine. Air-cooled Large SI engines share some important design features and operating characteristics with smaller air-cooled engines that are commonly used in lawn and garden applications. As described above, air-cooled engines face unique constraints for controlling emissions. These constraints seem to be especially problematic for CO emissions, causing manufacturers to add a greater degree of emission-control technology than that needed for water-cooled engines to meet California ARB standards.

We have identified three possible approaches to proposing emission standards for air-cooled engines. First, we could require them to meet the same emission standards as water-cooled engines. Especially for any long-term emission standards, this would require an extensive development effort to apply emission-control technologies in a way that would adequately control emissions. This would prevent any unfair competitive advantages by giving special treatment to a higher-emitting engine type.

Second, we could propose that all air-cooled engines meet the emission standards we have adopted for nonroad SI engines under 19 kW. The largest engines under 19 kW (nonhandheld Class II) must meet standards of 12.1 g/kW-hr for NO_X+HC emissions and 610 g/kW-hr for CO emissions. Since engines under 19 kW are almost all air-cooled, they share some important design characteristics with Large SI engines that are air-cooled.

Third, we could propose the same NO_X+HC for both air-cooled and water-cooled engines, but to allow air-cooled engines to meet less stringent CO emission standards. To avoid giving air-cooled engines a broad competitive advantage in applications where they are seldom used today, we could limit this less stringent CO standard to engines used predominantly in severe-duty applications. Under this approach, we would consider an application severe-duty if the majority of engines used in that application do not use water-cooling systems. Currently available data would suggest an adjusted CO standard of 75 to 100 g/kW-hr (55 to 75 g/hp-hr) CO for these engines.

We request comment on these and other potential approaches to proposing emission standards from air-cooled engines.

Equipment Used Predominantly Indoors. Operators of Large SI engines can today install emission-control systems with extremely low CO emission levels. CO emission levels can be especially low in these current systems where manufacturers are not required to simultaneously control for NO_X and HC emissions. We are concerned that emission standards requiring simultaneous control of all the regulated pollutants will limit manufacturers ability to continue to supply engines with very low CO emission levels. With increased concern for exposing individuals to engine exhaust in confined spaces, this may be especially problematic. We therefore request comment on alternate long-term standards that would allow the manufacturer to better balance emission levels of the various pollutants to offer low-CO engines for predominantly indoor applications.

One possible scenario would be increasing the HC+NO_X emission standard somewhat (for example, to 3 or 4 g/kW-hr), while tightening the CO emission standard (for example, to 1 or 2 g/kW-hr). We request comment on the need for such an alternate standard and on the emission standards that should apply. We also request comment on whether there would be any need to (1) adopt provisions to ensure that these engines are indeed operated predominantly in sensitive, indoor applications; (2) limit the number of these engine sales; or (3) adopt any other provisions to ensure that these alternate emission standards are not used to avoid the general standards.

Another alternative would be to adopt fuel-specific standards. Since LPG and natural gas are more likely to be used in enclosed areas, we could focus on adopting very stringent CO emission levels for these engines, with less of an emphasis on NO_X and HC emission levels. Since gasoline engines are not commonly used indoors, their emission standards could maximize NO_X and HC reductions, with less aggressive control of CO emissions. We request comment on adopting fuel-specific emission standards to address concerns for indoor air quality.

3. Supplemental Emission Standards

To address concerns for controlling emissions outside of the discrete procedures adopted for certification, we

[72] *See* 65 FR 35430 (June 2, 2000).

are considering requirements that would apply to a wider range of normal engine operation. We generally refer to this as off-cycle emissions.

Our goal is to achieve control of emissions over the broad range of in-use speed and load combinations that can occur in a Large SI engine to achieve real-world emission control, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective standard and an easily implemented test procedure. No single test procedure can cover all real-world applications, operations, or conditions. Yet, to ensure that emission standards are providing the intended benefits in use, we should have a reasonable expectation that emissions under real-world conditions reflect those measured on the test procedure.

Because the projected duty-cycles include specific operating modes (engine speeds and loads), we are concerned that an engine designed only to duty-cycle standards would not necessarily have the same emission performance in use. In contrast, an engine operating in any given piece of equipment may often operate at speed and load combinations not included in the certification duty cycle. Emission levels at speed and load points not represented in the duty cycles could be significantly higher than those measured with the duty cycles. Also, if manufacturers design engines to control emissions only under relatively narrow laboratory conditions, this does not ensure that the engines will control emissions under the wide range of ambient temperature, pressure, and humidity the engines will experience in the field. Testing by Southwest Research Institute highlighted this concern, showing that steady-state emission levels can increase ten-fold or more at speed-load points not included in the duty cycles.[73]

''Not-to-exceed'' testing would be one option for ensuring that emissions are controlled from Large SI engines over the full range of speed and load combinations seen in the field. Under not-to-exceed testing, we would specify an emission standard that applies more broadly than the traditional duty-cycle standard. The not-to-exceed standard would apply to all regulated pollutants (NO_X, HC, and CO) during a wide range of normal operation. In other programs where we have adopted not-to-exceed standards, the testing includes a broad range of in-use ambient conditions (*i.e.,* temperature, pressure, and humidity), but excludes measurement during any kind of abnormal operation.

The recent testing at Southwest Research Institute (SwRI) would appear to support not-to-exceed emission standards of 1.0 to 3.5 g/kW-hr (1.3 to 2.6 g/hp-hr) for NO_X+HC emissions and 7 to 13 g/kW-hr (5 to 10 g/hp-hr) for CO emissions. We would intend to allow considerable development time for manufacturers to meet any not-to-exceed provisions. If we adopt alternate emission standards for severe-duty engines, gasoline engines, or engines used in indoor applications, as described above, any corresponding not-to-exceed emission standards would be higher than the duty-cycle standards to serve as a cap on varying emission levels that result from different engine operation or ambient conditions.

D. Additional Program Considerations

1. Compliance Program Elements

In general, we expect to align our certification and compliance programs with those adopted by California ARB to the greatest extent possible. In particular, any near-term emission standards we may adopt should require no additional development or testing beyond what manufacturers are already doing to produce compliant engines for California. While long-term standards and other additional provisions may go beyond what California has already adopted, we expect to design the program to limit the additional burden. Nevertheless, these additional requirements would be important enhancements and would lead to a much more effective control program.

We request comment on the details of the compliance program adopted by California ARB, and whether the details of the compliance program are appropriate for use in the federal program. This includes several elements, such as production-line testing and in-use testing by manufacturers; useful life, deterioration factors, and warranty requirements; and several other provisions. The principal provisions under consideration that California ARB has not already adopted include:

—Procedures for testing emissions in the field in lieu of laboratory dynamometer testing.
—Specification of basic engine diagnostics to keep engines operating in their certified configuration.
—Concepts for manufacturers to control evaporative emissions.
—Provisions for engine rebuilders to bring engines back to their low-emission configuration when they are rebuilt.

2. Field Testing

One possible provision that should be highlighted is the possibility of adopting field-measurement procedures. As described above, we are considering proposing California ARB's requirement for manufacturers to test their in-use engines. Under this program, manufacturers remove in-use engines from equipment for testing in the laboratory. However, if we adopt field-measurement procedures, manufacturers would be allowed to show that they meet emission standards with in-use engines by measuring emissions directly from engines without removing them from the equipment. There are significant advantages to testing engines in the field. The reduced testing effort could substantially reduce the cost of in-use emission testing, both for manufacturers and for the Agency. Also, testing would capture real in-use engine operation, rather than relying on a surrogate duty cycle in the laboratory. We request comment on the desirability of developing measurement procedures to allow field testing of Large SI engines.

One constraint of measuring emissions in the field is the difficulty in measuring methane. Because of this, we are interested in proposing emission standards based on total hydrocarbon measurements, at least for field testing. We request comment on proposing total hydrocarbon standards also for laboratory testing. For gasoline and LPG engines, methane generally accounts for less than 10 percent of uncontrolled emissions, so this can easily be accounted for in selecting emission standards. As described above, we would need to rely on a nonmethane hydrocarbon emission standard for natural gas engines. This may limit the possibility of testing natural gas engines in the field.

3. In-Use Fuel Quality

In addition, manufacturers have raised the concern that in-use LPG fuels have highly varying quality. It is not clear that different LPG fuel compositions would have a direct effect on tailpipe emission levels. However, lower-quality fuels have a tendency to cause fuel condensation, and eventually gumming, on fuel system components. Since fuel systems play a central role in an engine's emission control system, this can eventually affect an engine's ability to accurately meter fuel, resulting in increased emission levels. We request comment on the need for and possibility of developing an industry-wide specification for in-use LPG fuels to

[73] See ''Emission Data and Procedures for Large SI Engines'' for more information (Docket A–2000–01; item II–B–1).

address this problem. In addition, we request comment on the possibility of applying engine technology to limit condensation of impurities or heavy-end hydrocarbon molecules from lower-quality fuel.

VII. Public Participation

We are committed to a full and open regulatory process with input from a wide range of interested parties. As part of any rulemaking, opportunities for input will include a formal public comment period and a public hearing.

With today's action, we open a comment period for this advance notice. We will accept comments until February 5, 2001. We encourage comment on all issues raised here, and on any other issues you consider relevant. The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. All comments, with the exception of proprietary information, should be directed to the docket (see **ADDRESSES**). If you wish to submit proprietary information for consideration, you should clearly separate such information from other comments by (1) labeling proprietary information ''Confidential Business Information'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If you want us to use a submission of confidential information as part of the basis for a proposal, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed and in accordance with the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission, it will be made available to the public without further notice to the commenter.

VIII. Regulatory Flexibility

Section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* requires the Administrator to assess the economic impact of proposed rules on small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, amended the RFA to strengthen its analytical and procedural requirements and to ensure that small entities are adequately considered during rule development. The Agency accordingly requests comment on the potential impacts on a small business of the program described in this notice. These comments will help the Agency meet its obligations under SBREFA and will suggest how EPA can minimize the impacts of this rule for small companies that may be adversely affected.

Depending on the number of small entities identified prior to the proposal and the level of any contemplated regulatory action, we may convene a Small Business Advocacy Review Panel under section 609(b) of the Regulatory Flexibility Act as amended by SBREFA. The purpose of the Panel (or multiple Panels, as necessary) would be to collect the advice and recommendations of representatives of small entities that could be affected by the eventual rule. If we determine that a panel is not warranted, we would intend to work on a less formal basis with those small entities identified.

We request information on small entities potentially affected by this rulemaking. Information on company size, number of employees, annual revenues and product lines would be especially useful. Confidential business information may be submitted as described in section VII. The following sections address several specific issues for different industries.

A. Recreational Vehicles and Highway Motorcycles

We anticipate that industries related to recreational vehicles and highway motorcycles that may be affected by this rulemaking will largely fall within the categories listed in Table VIII–1 below. We request comment on the completeness and accuracy of the list, and on the suitability for this rulemaking of the definitions of small business established by SBA. We may propose to change these definitions, if such changes would better suit the particular industries and regulations being considered.

TABLE VIII–1.—RECREATIONAL VEHICLE INDUSTRIES WITH SMALL BUSINESSES

Industry	NAICS [a] codes	Defined by SBA as a Small Business If:[b]
Gasoline engine and parts manufacturers	336312	<750 employees.
Motorcycles and motorcycle parts manufacturers	336991	<500 employees.
Snowmobile and ATV manufacturers	336999	<500 employees.
Independent Commercial Importers of Vehicles and parts	421110	<100 employees.

Notes:
a. North American Industry Classification System.
b. According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered ''small entities'' for purposes of a regulatory flexibility analysis.

B. Large SI

Table VIII–2 lists the industry segments that relate to companies that may need to meet emission standards and other requirements for Large SI engines. Two engine manufacturers qualify as small businesses. Both of these companies plan to produce engines that meet the standards adopted by California ARB in 2004. Since we don't expect the near-term standards contemplated in this document to add any significant requirements to the California ARB program, these standards would impose very little new burden for these and other manufacturers. If we adopt long-term standards, this would require manufacturers to do additional calibration and testing work. If we adopt new test procedures (including transient operation), there may also be a cost associated with upgrading test facilities. If we set emission standards to mirror the levels proposed for 2007 highway heavy-duty engines, this would also require extensive hardware and product development to reduce emissions.

In addition, we are considering recordkeeping requirements for companies that rebuild Large SI engines. These would be very similar to the requirements we have already adopted for highway engines, nonroad diesel engines, and commercial marine diesel engines. Many of these companies qualify as small businesses, but we expect the added burden to be very small.

TABLE VIII–2.—LARGE SI INDUSTRIES WITH SMALL BUSINESSES

Industry	NAICS code	Defined by SBA as a small business if:
Nonroad SI engines	333618	<1,000 employees.
Industrial trucks	333924	<750 employees.
Engine repair and maintenance	811310	<$5 million revenues.

C. Recreational Marine

The recreational marine sector includes a variety of engine and boat manufacturers that are small businesses. We convened a Small Business Advocacy Review Panel under section 609(b) of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. We describe the rulemaking issues related to these small businesses in section V.D.4.

IX. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (Oct. 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 any regulatory action (including an advance notice of proposed rulemaking) 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.

This Advance Notice was submitted to OMB for review. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this Notice.

X. Statutory Provisions and Legal Authority

Section 213(a)(1) of the Clean Air Act, 42 U.S.C. 7547(a), requires that we study the emissions from all categories of nonroad engines and equipment (other than locomotives) to determine, among other things, whether these emissions ''cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health and welfare.'' Section 213(a)(2) further requires us to determine, through notice and comment, whether the emissions of carbon monoxide (CO), volatile organic compounds (VOCs), and oxides of nitrogen (NO_X) found in the above study significantly contributes to ozone or CO concentrations in more than one ozone or CO nonattainment area. With such a determination of significance, section 213(a)(3) requires us to establish emission standards applicable to CO, VOC, and NO_X emissions from classes or categories of new nonroad engines and vehicles that cause or contribute to such air pollution. Moreover, if we determine that any other emissions from new nonroad engines contribute significantly to air pollution, we may promulgate emission standards under section 213(a)(4) regulating emissions from classes or categories of new nonroad engines that we find contribute to such air pollution.

As directed by the Clean Air Act, we conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991.[74] Based on the results of that study, referred to as NEVES, we determined that emissions of NO_X, HC, and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994).[75] Given this determination, section 213(a)(3) of the Act requires us to promulgate emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We have found that the nonroad engines included in this ANPRM ''cause or contribute'' to such air pollution.[76]

Where we determine that other emissions from nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes us to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that we determine cause or contribute to such air pollution, taking into account cost, noise, safety and energy factors associated with the application of technology used to meet the standards. We have made this determination for emissions of particulate matter (PM) and smoke from nonroad engines (see 59 FR 31306, June 17, 1994). In that rulemaking, we found that smoke emissions from nonroad engines significantly contribute to such air pollution based on smoke's relationship to the particulate matter that makes up smoke as well as smoke's effect on visibility and soiling of urban buildings and other property. Particulate matter can be inhaled into the lower lung cavity, posing a potential health threat. We cited recent studies associating PM with increased mortality.[77] We also promulgated standards for emissions of PM and smoke from nonroad diesel engines in that rulemaking. We have also found that emissions of PM from nonroad engines included in this ANPRM ''cause or contribute'' to such air pollution.

Section 202 (a)(3)(E) provides EPA with authority to revise highway motorcycle emissions standards, establishing standards which reflect the greatest degree of emission reduction achievable, taking cost and other factors into consideration. EPA may promulgate new standards based on the effects of the air pollutants on public health and welfare. EPA may also reclassify motorcycles as light-duty vehicles or classify them as a separate class or

[74] ''Nonroad Engine and Vehicle Emission Study—Report and Appendices,'' EPA–21A–201, November 1991 (available in Air docket A–96–40).

[75] The terms HC (hydrocarbon) and VOC (volatile organic carbon) refer to similar sets of chemicals and are generally used interchangeably.

[76] *See* Final Finding, ''Control of Emissions from New Nonroad Spark-Ignition Engines Rated above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines'' elsewhere in today's Federal Register for EPA's finding for Large SI engines and recreational vehicles. EPA's findings for marine engines are contained in 61 FR 52088 (October 4, 1996) for gasoline engines and 64 FR 73299 (December 29, 1999) for diesel engines.

[77] The nonroad study (NEVES) found that nonroad sources are responsible for approximately 5.55 percent of the total anthropogenic inventory of PM emissions and over one percent of total PM emissions in six to ten of the thirteen nonattainment areas surveyed.

category. In such case that motorcycles are a separate class or category, the Act directs EPA to consider the need to achieve equivalency or emission reductions between motorcycles and other vehicles to the maximum extent practicable. We request comment on how any potential regulatory programs would be consistent with these sections.

List of Subjects

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

40 CFR Part 1048

Environmental protection, Administrative practice and procedure, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 1051

Environmental protection, Administrative practice and procedure, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: November 20, 2000.

Carol M. Browner,

Administrator.

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Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1000, et al.

Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity to File Written Exceptions to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.: DA–00–03]

Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A69
1005	Appalachian	AO–388–A11
1006	Florida	AO–356–A34
1007	Southeast	AO–366–A40
1030	Upper Midwest ...	AO–361–A34
1032	Central	AO–313–A43
1033	Mideast	AO–166–A67
1124	Pacific Northwest	AO–368–A27
1126	Southwest	AO–231–A65
1131	Arizona-Las Vegas.	AO–271–A35
1135	Western	AO–380–A17

SUMMARY: This tentative decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000. A hearing was held May 8–12, 2000, in Alexandria, Virginia, to consider proposals submitted by the industry to change the formulas. The material issues on the record of the hearing relate to the elements of the Class III and Class IV pricing formulas, including: commodity prices, manufacturing (make) allowances, factors related to product yield, role of producer costs of production, and the issue of whether to omit a recommended decision.

The major changes in the decision would reduce the cheese make allowance used in the Class III component price calculations, increase the make allowances used in the Class IV component price calculations, provide for separate Class III and Class IV butterfat prices, and remove the butterfat adjustment factor from the protein price formula. In addition, the decision requires that processes be undertaken to determine if producers approve issuance of the amended orders on an interim basis.

DATE: Comments are due on or before February 5, 2001.

ADDRESSES: Comments (six copies) should be filed with the Hearing clerk, Room 1081, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address connie.brenner@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis

This decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501).

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this regulatory flexibility analysis. When preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This final regulatory flexibility analysis considers these points and the impact of this final regulation on small entities. The legal basis for this action is discussed in the preceding section.

The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses constitute approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there are approximately 1,200 plants associated with Federal orders, and of these plants, approximately 720 qualify as ''small businesses,'' constituting about 60 percent of the total.

During January 2000, there were approximately 240 fully regulated handlers (of which 186 were small businesses), 43 partially regulated handlers (of which 28 were small businesses), and 71 producer-handlers of which all were considered small businesses for the purpose of this initial

regulatory flexibility analysis, submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 72 percent of all milk marketed in the U.S. and 74 percent of the milk of bottling quality (Grade A) sold in the country. Forty-four distributing plants were exempt from Federal order regulation on the basis of their small volume of distribution.

Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 3.965 billion pounds in January 2000—38.8 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—approximately 77 percent of the total U.S. population.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that these proposed amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments, consideration was given to mitigating negative impacts.

One of the principal issues considered at the hearing was the source of price data that should be used to generate prices for milk components and, thereby, prices to be paid to producers. The options considered were the National Agricultural Statistics Service (NASS) surveys of selling prices of manufactured dairy products, Chicago Mercantile Exchange (CME) prices, and producer costs of production. The decision selects the NASS-reported prices as the most appropriate for use in determining product prices because of the considerably larger volume of product represented in those prices series than in the CME price data. Producer cost of production was not included in the calculation of prices because assuring dairy farmers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products.

Various proposals to reduce or increase the levels of the manufacturing (make) allowances of butter, nonfat dry milk, cheddar cheese and dry whey were considered. This decision adjusts these make allowances from their current levels on the basis of data and testimony contained in the hearing record. Most of the adjustments are minimal. Primarily, manufacturing cost surveys done by USDA's Rural Cooperative Business Service and the California Department of Food and Agriculture were used to determine the most appropriate levels of make allowance for the products used in calculating Federal order class prices.

The only other actual collection of manufacturing cost data for cheddar cheese and dry whey that was cited in the hearing record was a survey of cheddar cheese and dry whey manufacturing costs arranged for by the National Cheese Institute. This survey was conducted by persons unfamiliar with the dairy industry among cheese processors who would benefit from having overstated costs included in the results, and as a result has less reliability than the two studies used to determine the cheddar cheese make allowance. In addition, one nonfat dry milk manufacturer testified to costs of manufacture that exceeded those of the two studies by a significant amount, mostly in the areas of return on investment and marketing costs. The data did not include any information about the pounds of product manufactured, and could not have been weighted with the data from the two other studies.

Several proposals to change the factor reflecting the yield of nonfat dry milk from nonfat solids in milk would have increased the nonfat solids price, and the Class IV skim price, but ignored the need to reflect the generally lower price and higher manufacturing cost of buttermilk powder that also must be considered in calculating the Class IV nonfat solids price. Testimony and data in the record was used to determine a factor more representative of nonfat dry milk yield and the effect of buttermilk powder price and cost. The alternatives to the formula adopted did not include consideration of the price, cost, and volume of buttermilk powder relative to those of nonfat dry milk.

Proposals were made to reduce the butter and cheese product prices used in calculating the Class IV butterfat price and the Class III prices. The record of this proceeding continues to support the use of the product prices adopted in the final rule in the Federal milk order reform process as representing accurately the values of these products. In the case of adjusting the Grade AA butter price to reflect the value of Grade A butter, the record fails to reveal any source of information for obtaining current prices for Grade A butter. In the case of proposals to remove the 3-cent adjustment between the barrel and 40-pound block cheese prices, there was no testimony about the actual difference in cost between the two types of packaging that overcame testimony that 3 cents is the actual cost difference, or data that indicates that the customary price difference is at least 3 cents.

Proposals to reconsider the class price relationships in the orders were considered, although a proposal to use a weighted average of the Class III and Class IV prices as a Class I price mover was not noticed for hearing in this proceeding. The hearing record supports the continued relationships between the Class IV and Class II prices, and between the higher of the manufacturing class prices and the Class I price.

A proposal that the Class II differential be changed to negate any changes in the Class IV price formula that would affect the current price relationship between nonfat dry milk and Class II failed to consider that the Class II-Class IV price difference adopted in Federal order reform is based on the difference in the value of milk used to make dry milk and the value of milk used to make Class II products.

Proposals that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices did not address the rationale for the current Class I price differentials above the manufacturing price levels for the purpose of obtaining an adequate supply of milk for fluid (drinking) use.

The changes to the Class III and Class IV price formulas included in this decision should have no special impact on small handler entities. All handlers manufacturing dairy products from milk

classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing are required by the Agricultural Marketing Agreement Act and should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of any of the proposed amendments.

Interested parties are invited to comment on the probable regulatory and informational impact of the amended provisions of this decision on small businesses. Also, parties may suggest modifications of this decision for the purpose of tailoring the applicability of the provisions to small businesses.

An analysis was done on the effects of the alternatives selected, and is summarized below.

Analysis

In order to assess the impact of changes in Federal order milk pricing formulas, the Department conducted an economic analysis. While the primary purpose of this decision is to amend the product pricing formulas used to price milk regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also affect the prices of regulated milk classified as Class I and Class II.

The modifications in this decision are analyzed simultaneously as a change from the current set of formulas. This analysis focuses on impacts on milk marketed under all Federal milk marketing orders, and treats the Federal order system as a single entity. Milk marketed in California, milk marketed under other state regulations and unregulated milk are treated separately. The hard manufactured dairy product markets are national.

Scope of Analysis

Impacts were measured as changes from the model baseline as adapted from the USDA dairy baseline published in February 2000. The USDA baseline is a national, annual projection of the supply-demand-price situation for milk and dairy products. Baseline assumptions are: (1) The price support program would end on December 31, 2000; (2) the Dairy Export Incentive Program would continue to be utilized; and (3) the Federal Milk Marketing Order Program would continue as reformed on January 1, 2000.

It was necessary to make the following simplifying assumptions in order to conduct the analysis. The Federal order share of U.S. milk marketings is about 67 percent. About 60 percent of all milk manufactured (Classes II, III, and IV) is marketed under Federal order regulation. Given the prominence of Federal order marketings in the U.S. milk manufacturing industry, prices paid for manufactured milk under Federal orders cannot get too far out of alignment with the value of milk for manufacturing in the rest of the United States. Similarly, the fluid prices in non-Federal order markets are largely reflective of Federal order minimum Class I prices.

California stands out as the state with the highest production and has its own market regulations. California milk marketings are estimated as a function of the California pool price. Non-California milk marketings are estimated as a function of an all-milk price that incorporates the Federal order pool price and over-order payment estimates. The Federal order share of those non-California marketings is estimated as a function of the Federal order all-milk price relative to the estimated value of manufactured milk.

Cooperatives manufacture about 40 percent of the cheese and about 70 percent of the butter and nonfat dry milk manufactured nationally, and sell such dairy products in wholesale and retail markets in competition with other manufacturers. A baseline assumption is that a cooperative passes through to its members the best price and best return on investment that it can. A higher minimum Federal order price could result in cooperatives paying higher monthly prices for milk, but would result in lower returns on investments paid at the end of the year. Total cash receipts for member milk marketings processed by cooperatives would be changed only by changes in wholesale product prices.

Specifically, it is assumed that changes in pay prices and cash receipts to cooperative members for raw milk marketed by cooperatives, or to non-members for milk marketed to proprietary handlers would be fully reflected by lower or higher Federal minimum class prices. Changes in pay prices and cash receipts to cooperative members for milk manufactured by cooperatives would be fully reflected by the manufacturing milk price that moves with changes in manufactured product prices only. This applies to 40 percent of the Class III milk and 70 percent of the Class IV milk. In the case of cooperatives, it is assumed that differences between the model generated average value for manufactured milk and the average of the Class II, Class III, and Class IV prices would be passed on to producer-members in the form of higher or lower pay prices. In the case of proprietary plants, it is assumed that the plants would retain the differences. However, in the case of a loss, proprietary manufacturing plants could de-pool milk to equalize their margins with cooperative plant margins. In the model, this is accounted for by an equation that estimates the Federal order share of non-California marketings as a function of the ratio of the Federal order all-milk price relative to the estimated value of manufactured milk. The Federal order share increases as the price ratio increases.

In addition to altering the sharing of manufacturing proceeds between manufacturing plants and producers the decision's formula changes have an impact on Class I and Class II prices. Class II prices move in concert with changes in Class IV. The effects on Class I prices depend upon the effect on the Class III price relative to the Class IV price. Class I prices are based on the higher of the Class III or Class IV prices.

Retail prices of fluid milk and Class II soft manufactured products are assumed to respond penny for penny to changes in the milk cost of these products. Wholesale and retail margins are assumed unchanged from baseline. Demands for Class I and Class II products are functions of price, per capita consumption and population. Wholesale prices for cheese, butter and nonfat dry milk reflect supply and demand for these products. The milk supply for manufacturing these hard products is the result of milk marketings minus the volumes demanded for Class I and Class II products. The remaining volume is allocated to Class III and Class IV according to returns to manufacturing in each class. Demands for products in these classes are functions of per capita consumption and population. Per capita consumption for the major milk and dairy products are estimated as functions of price, income, and the proportion of food expenditures spent away from home.

Summary of Results

The results of the amendments to the Class III and Class IV formulas are summarized using five-year, 2001–2005, average changes from the model baseline. The results presented for the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices.

In addition, the advanced Class I base price is driven by the higher of the Class III or Class IV prices. With the amended formulas, the Class I base price is the Class IV price in all years of the analytical period. In each year, the Class I price, at the class average test of 2 percent butterfat, is slightly above the baseline. This results in a small reduction in the demand for skim milk, and to a lesser extent butterfat, for Class I use. Milk generally shifts from Class I use to the production of butter, nonfat dry milk, and cheese in generally the same proportions as in the baseline. As a result, the wholesale prices of butter, nonfat dry milk and cheese each decrease slightly.

Producers. Over the five-year period, the changes taken as a whole result in a small increase of about $0.007 per hundredweight in the Federal order minimum blend price for milk at test. Including the effect of premiums, the average milk price received by Federal order producers is expected to average up $0.009 per hundredweight. Federal order marketings increase by an average 139 million pounds and cash receipts increase by $30 million (0.18 percent) from baseline receipts of $16,414 million. U.S. milk marketings increase by an average 24 million pounds annually, and cash receipts increase by $15.5 million (0.07 percent) from baseline receipts of $23,841 million.

There is an increase of $0.007 per hundredweight in the five-year annual average U.S. all-milk price.

Milk Manufacturers and Processors. For 2001, the Class III price at test (3.61 percent butterfat) is increased by $0.02 per hundredweight under the amended marketing orders. For the second year, Class III is unchanged from baseline and then decreases slightly in 2003–2005. For the five-year period, Class III at test averages down about $0.015 per hundredweight.

The major change is the five-year annual average increase in the minimum Class III butterfat price of about $0.73 per pound, and a decline in the average minimum Class III skim milk price of about $2.72 per hundredweight. The estimated NASS cheese price, at 38 percent moisture, decreases an average $0.003 per pound (0.2 percent).

Butterfat prices for Class II and Class IV average down slightly ($0.008 per pound) for the five-year period, while skim milk prices increase about $0.11 per hundredweight. This results in an increased Class II milk cost, at test, to processors of about 0.12 percent. The butter price decreases an average 0.5 percent while the average nonfat dry milk price decreases by about 0.3 percent for the period.

The average U.S. value of milk in manufactured products decreases by about $0.03 per hundredweight for the period.

Class I costs to fluid processors (at the class average butterfat of 2 percent) average about $0.03 per hundredweight (0.23 percent) higher, as a result of higher skim milk prices each year.

Consumers. The expected $0.03 per hundredweight increase in the Class I price for 2001–2005 results in about a $0.0025 increase in the price per gallon of fluid milk for consumers. Consumer costs for fluid milk are estimated to increase on average by about $10.4 million annually over the five-year period.

The price of butter is estimated to decrease on average $0.006 per pound for the period. Cheese is estimated to decrease $0.003 per pound. Consumer expenditures on butter are estimated to decrease by about $5.6 million, and on American cheese, decrease by about $10.6 million annually over the five-year period.

A complete economic analysis is available upon request from Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7091, e-mail address howard.mcdowell@usda.gov

Civil Rights Impact Statement

This decision is based on the record of a public hearing held May 8–12, 2000, in Alexandria, Virginia, in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, that required the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The consolidated orders were implemented on January 1, 2000.

Pursuant to Departmental Regulation (DR) 4300–4, a comprehensive Civil Rights Impact Analysis (CRIA) was conducted and published with the final decision on Federal milk order consolidation and reform. That CRIA included descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture; and (3) basics of the Federal milk marketing order program to provide background information. Also included in that CRIA was a detailed presentation of the characteristics of the dairy producer and general populations located within the former and current marketing areas.

The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability, who choose to deliver milk to handlers regulated under a Federal order will receive the minimum blend price. It also was concluded that ''one of the reasons for success of the Federal milk order program is that all producers benefit through assistance in developing steady, dependable markets, reducing price instability and unnecessary price fluctuations, and assurances of a minimum price for their milk. With this assurance, producers are more willing to make the significant cost investments in milk cows and equipment needed to produce high-quality milk. Federal orders provide the same assurance for all producers, without regard to sex, race, origin, or disability. The value of all milk delivered to handlers competing for sales within a defined marketing area is divided equally among all producers delivering milk to those handlers.''

The issues addressed at the May 2000 hearing are issues that were addressed as part of Federal milk order consolidation and reform. Establishing representative make allowances in the formulas that price milk used in Class III and Class IV dairy products is an issue that affects the obligations of handlers of those products to the Federal milk order pool, and similarly the pool obligations of Class I and Class II handlers. The decision should result in no differential benefits in dividing the pool among all producers delivering milk to those regulated handlers. Therefore, USDA sees no potential for affecting dairy farmers in protected groups differently that the general population of dairy farmers.

Decisions on proposals to amend Federal milk marketing orders must be based on testimony and evidence presented on the record of the proceeding. The hearing notice in this proceeding invited interested persons to address any possible civil rights impact of the proposals being considered in testimony at the hearing. No such testimony was received.

Copies of the Civil Rights Impact Analysis done for the final decision on Federal milk order consolidation and reform can be obtained from AMS Dairy Programs at (202) 720–4392; any Milk Market Administrator office; or via the Internet at: www.ams.usda.gov/dairy/.

Prior documents in this proceeding: *Notice of Hearing:* Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this tentative decision with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, by the 60th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The Hearing notice specifically invited interested persons to present evidence concerning the probably regulatory and informational impact of the proposals on small businesses. To the extent that this issue was raised, it is considered in the following findings and conclusions.

This decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501). The findings and conclusions set forth below are based on the record of a public hearing to consider proposals submitted by the industry to change the pricing formulas in the marketing agreements and the orders regulating the handling of milk in the Northeast and ten other marketing areas held in Alexandria, Virginia, on May 8–12, 2000. Notice of such hearing was issued on April 6, 2000 and published on April 14, 2000 (65 FR 20094).

Brief Summary of Changes to Class III and IV Formulas

As instructed by the legislation requiring this proceeding, the Class III and IV pricing formulas, and all of the elements of the formulas, were re-considered in developing this decision. The changes made in the Class IV component formulas are minimal. The product prices used in the Class IV formulas (butterfat and nonfat solids) are unchanged. The make allowances for butter and nonfat dry milk are increased slightly, by .1 cents for butter and .3 cents for nonfat dry milk. The divisor used in the Class IV butterfat component formula is unchanged, while the 1.02 divisor used in the nonfat solids price formula to reflect the relative values and yields of buttermilk powder and nonfat dry milk is eliminated.

The Class III component price formulas are changed to a greater degree. The most substantive change is to calculate a Class III butterfat price on the basis of the value of butterfat in cheese, not on its value in butter. At the same time, the protein price formula would reflect the value of protein in cheese, without including a butterfat factor in the formula to adjust for the differential value of butterfat used in butter and cheese. The product price for cheese is changed to reflect a 38-percent moisture adjustment in the barrel cheese price to place that price on the same moisture basis as the block cheese price. The dry whey price, for computing the other solids price, is unchanged. The change in the make allowance for cheese is minimal, and the whey powder make allowance is increased only enough to remain the same as that for nonfat dry milk. As with the current component prices, the Van Slyke formula is used to determine the yield effects of both the Class III protein and butterfat prices.

The material issues on the record of the hearing relate to:

1. Role of producer costs of production.
2. Commodity prices (CME vs. NASS).
3. Commodity and component price issues.
   a. General approaches on make allowances.
   b. Class IV butterfat and nonfat solids prices.
   c. Class III butterfat, protein and other nonfat solids prices.
   d. Effects of changes to Class III and Class IV price formulas.
4. Class price relationships.
5. Class I price mover.
6. Miscellaneous and conforming changes.
   a. Advance Class I butterfat price.
   b. Classification.
   c. Distribution of butterfat value to producers.
   d. Inclusion of Class I other source butterfat in producer butterfat price computation.
7. Issue of whether to omit a recommended decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Role of Producer Costs of Production

Proposal 29 in the hearing notice proposed that producers' costs of production be incorporated into the Class III and Class IV pricing formulas. A number of dairy farmer witnesses testified that, just as manufacturing processors are assured that their costs of processing milk products will be covered, dairy farmers should also have some assurance that they will be able to continue to operate their dairy farms without losing money. Under the current system, according to the National Farmers Union (NFU) witness, incorporating a make allowance for processors but not for producers leaves dairy farmers to bear the entire burden of changes in supply and demand.

Unfortunately, as explained in both the proposed and final rules under Federal order reform, assuring producers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products. As noted by the DFA witness, although pricing proposals incorporating cost of production have been noticed and reviewed several times in the last decade without success, if a sound mechanical concept could be advanced that overcomes the objections relative to supply and demand, it should be considered.

The witnesses testifying on behalf of NFU and National Farmers Organization (NFO) both supported the concept of variable make allowances, in which the allowances would be adjusted for changes in supply and demand as a means of addressing the problem of manufacturers being insulated from changes in supply and demand by their fixed make allowances. In other words, increases in dairy farmers' costs of production would be reflected in reductions in manufacturers' margins. Both proposals would divide Class III and Class IV values by dairy farmers' costs of production. The NFU proposal would use an average national cost of production, presumably as published by USDA's Economic Research Service, and the NFO proposal would use the CDFA milk production cost index.

Although the concept of assuring that as costs of production increase, manufacturing allowances would decline to the extent product prices do not also increase has appeal, it is difficult to believe that such a proposal would be in the best long-term interests of dairy farmers, processors, or consumers. It certainly could easily fail to cover processors' costs to the extent that would keep them operating. It is

easy to construct a situation in which milk production costs increase because of feed shortages, resulting in reduced make allowances to processors. When the manufacturers' make allowances decline to the point the variable costs of processing are not covered, they would have little choice but to cease processing. At that point, dairy farmers who are facing high costs of production would have to find alternative outlets for their milk. If many processors reach the point at which they must make the decision to cease operating near the same time, there likely would be very disorderly conditions among dairy farmers looking for outlets for their milk. In addition, consumers would be likely to find shortages in the availability of dairy products.

This proceeding must join the list of those in which cost of production proposals have been considered and found wanting in terms of being able to reflect both the supply and demand sides of the market for dairy products. There is no evidence in the record that either the ERS or the CDFA index has been used to price milk. As noted by the NFO witness, the current pricing system uses the interaction of supply and demand for milk products as an indirect method of meeting the pricing requirements of the Agricultural Marketing Agreement Act of 1937 for milk. According to the witness, producer milk has a value before it is processed. In today's market, it is hard to agree that milk has a market value to consumers without being pasteurized, at least.

2. Commodity Prices (CME vs. NASS)

As recommended in the proposed rule and adopted in the final rule on Federal order reform (published on September 1, 1999 (64 FR 47898)), commodity prices determined by surveys conducted by USDA's National Agricultural Statistics Service (NASS) are currently being used in the component price formulas that replaced the BFP. This decision makes no changes in the source of product price data.

Several proposals (1, 5, 10 and 19) were considered during the current proceeding that recommended using prices reported by the Chicago Mercantile Exchange (CME) instead of the NASS surveys to determine commodity prices. Both the CME and the NASS surveys were supported by testimony at the hearing and in briefs. The CME is a cash market where speculators, producers, and processors can buy and sell products. It is a mechanism for establishing prices on which the dairy industry relies. Thus, a lot of contracts to buy and sell dairy products are based on CME prices. A USDA witness testified that he is unaware of any other indices used to price cheese in the U.S. According to several witnesses, cheese and butter processors generally base their contract sales on CME prices.

The NASS price survey gathers selling prices of cheddar cheese, Grade AA butter, nonfat dry milk and dry whey from a number of manufacturers of these products nationwide. At the time the proposed rule on Federal order reform was published (January 30, 1998), the NASS survey included prices for cheddar cheese only. This survey had begun in March 1997. In September 1998, before the final decision was published in April 1999, NASS began surveys of Grade AA butter prices, dry whey prices, and nonfat dry milk prices. In developing these commodity surveys, input was obtained from the dairy industry on appropriate types of products, packaging, and package sizes to be included for the purpose of obtaining unbiased representative prices. A sale is considered to occur when a transaction is completed, the product is shipped out, or title transfer occurs. In addition, all prices are f.o.b. the processing plant/storage center, with the processor reporting total volume sold and total dollars received or price per pound. NASS Dairy Products Prices reports wholesale cheddar cheese prices for both 500-pound barrels and 40-pound blocks, USDA Grade AA butter, USDA Extra Grade or USPH Grade A non-fortified dry milk and USDA Extra Grade edible non-hygroscopic dry whey. A more-detailed description of the surveys can be found in the final decision of April 2, 1999 (64 FR 16093).

The proponents of proposal 1, Western States Dairy Producers Trade Association, et al. (WSDPTA), a group of several trade associations and cooperatives, proposed that the NASS commodity prices for butter, cheese, and nonfat dry milk that currently are used for computing the Federal order component prices be replaced with prices determined by trading on the CME. Dry whey was not included in the proposal because there is no dry whey cash contract traded on the CME. A witness from WSDPTA did not oppose the collection and reporting of NASS data, but expressed the opinion that while it serves an important function as information, it should not be used to establish prices. The proponents presented several benefits of using the CME over the NASS survey for commodity prices.

Proponents explained that by using CME prices in the formulas, prices would be known immediately rather than a week later when the NASS prices are published, reflecting more quickly the supply-demand conditions for dairy products. The one-week delay is caused by the time necessary to collect data. A witness for National Farmers Organization noted that interested persons are able to check the CME value of products on a daily basis and use the reported prices as a factor to establish what they're going to be paying or paid for cheese.

A witness from WSDPTA went on to explain that buyers, sellers, and speculators trade the CME, trying to obtain a price in their favor, while the price actually is determined by supply and demand forces. He described the rules as fair and the results as transparent, with participants having a number of interests. The witness continued by noting that the CME price result is instant and results cannot be altered. In contrast, he stated, NASS prices are reported by sellers only, who are not disinterested parties. He argued that NASS respondents can modify their numbers or file an initial report after calculating the price impact of the latest reports.

The proponents also concluded that the urging by many hearing participants that the NASS price series include mandatory participation and be audited proves that the NASS series is not reliable enough to be used as a price-discovery method.

Finally, the witness from WSDPTA expressed the view that the NASS price series would feed on itself and result in price setting, not price discovery. He continued by noting that plants and their buyers will obtain prices one week and sell the commodity in the following week at a price derived in large part from the price obtained in the prior week. The witness compared the NASS survey to the California State survey of powder prices which, he claimed, results in a circular pricing system that is mathematically incapable of fully reflecting the top of the market price for powder because so little of the survey volume is priced off of the spot market. Proponents expressed the belief that this circularity causes prices to remain lower than they would without it, and that prices would increase more slowly and decrease more rapidly than would prices on the CME, causing overall lower prices for dairy farmers.

Opponents of changing from NASS to CME prices to compute component prices included International Dairy Foods Association (IDFA), Dairy Farmers of America (DFA), and National Milk Producers Federation (NMPF). Witnesses for these parties argued that the NASS survey includes pricing based

on a significantly larger volume of product than does the CME. In the case of the nonfat dry milk market, the table of 1999 monthly Chicago Mercantile Exchange Cash Markets data from the 1999 Annual Dairy Market Statistics showed that there were no sales reported for either extra grade or Grade A in the year 1999.

According to a witness from IDFA, the volume of cheddar cheese in the NASS survey is equal to 26.4 percent of all cheddar cheese production in the U.S. for the period September 1998 through February 2000. During the same period, the CME volume of cheddar cheese traded represented only 1.7 percent of U.S. cheddar cheese production. The witness stated that for the same 18-month period, the NASS survey volumes represented 14.4 percent of all U.S. butter production while CME trading consisted of only 2.6 percent. He also noted that switching from the NASS survey data to the CME data would result in a change from a very broad to an extremely thin representation of actual product transactions.

Opponents to the proposal to use CME prices also pointed out that prices at the CME are Chicago or Midwest prices based on the delivery location specification of the contract. Therefore, they argued, the scope of the reported prices for cheese, butter, and nonfat dry milk are not national. A witness for Kraft noted that reliance on the CME alone would exclude the substantial and growing volume of cheese produced in the western United States (U.S.), particularly California. A witness for Northwest Dairy Association suggested that a transportation credit would need to be used with CME prices, at least in the West, to reduce the value of the CME to a more representative level. Opponents went on to explain that since the NASS survey contains data from plants located all over the United States, NASS prices represent a national scope of the prices of each of the particular commodities.

According to the testimony in the record and a number of the briefs, the cheese and butter sellers and buyers look to the CME to identify the most current price levels. As a result, prices move in response to supply and demand conditions in the marketplace as reflected at the CME. Since the transaction prices of commodities are based off of the CME, it is difficult to see how the NASS survey can cause, or result in, circularity. The NASS prices reflect the CME prices with a short lag, but are based on a much greater volume, enhancing the stability of the price series. Continued use of the NASS price survey appears to be the best method of obtaining reliable data about commodity prices.

As stated in the final decision on Federal order reform, NASS data traditionally have been collected via a survey with voluntary participation. The price information, like most NASS data, is not audited. NASS, however, applies various statistical techniques and cross-checking with other sources to provide the most reliable information available. The issue of mandatory and audited NASS data, however, will not be discussed further as NASS is not authorized to conduct such activities, and these issues are not within the scope of this rulemaking.

3. Commodity and Component Price Issues

a. General Approaches on Make Allowances

Changes to the make allowances for each of the product formulas used in calculating component prices were proposed and discussed at length during this proceeding. Except in the case of dry whey, make allowances adopted in the component price formulas in this decision are calculated using a weighted average of the most recent California cost of production study and the Rural Business Cooperative Services (RBCS) study. A marketing cost of $.0015 per pound is added to both the California costs and the RBCS costs, as in the Final Rule, and the California value for return on investment is used to adjust the RBCS cost. This is generally the same approach used to determine the appropriate make allowances in the current orders, and results in values that differ little from the formulas in the current orders.

For the calculation of the Class III ''other nonfat solids'' price, neither the California nor RBCS studies included information on the cost of making dry whey, and a survey done for this proceeding under the auspices of IDFA was not considered sufficiently reliable for use in establishing a make allowance. Consequently, the ''other solids'' make allowance should continue to be the same as that used for nonfat dry milk.

A number of the proposals considered in this proceeding would change the manufacturing, or make, allowances adopted for the pricing formulas under Federal order reform. There was considerable testimony on the appropriate factors to be considered in establishing make allowances, and several sources of data were cited as the most accurate to use for such a purpose. In addition, a number of witnesses testified about the philosophical basis for determining appropriate manufacturing allowances for milk pricing formulas.

Two surveys of product manufacturing costs that were averaged for use in calculating make allowances under Federal order reform were the California Department of Food and Agriculture (CDFA) study, which is done annually and includes nearly 100 percent of dairy products manufactured in California, and the Rural Business Cooperative Service (RBCS) study, which is conducted annually by USDA as an in-plant benchmark study for participating cooperative associations. These two surveys had both been updated since earlier versions had been used in determining the manufacturing allowances used in the current component pricing formulas. In addition, the National Cheese Institute (NCI), an affiliate of the International Dairy Foods Association (IDFA), contracted with a third party to conduct a survey of the costs of manufacturing cheese and whey powder for use in this proceeding.

A witness for National Milk Producers Federation (NMPF) stated that make allowances should reflect the costs incurred by average plants manufacturing the particular dairy product used in the component/Class price formulas: butter, nonfat dry milk, cheese, and dry whey. The witness went on to explain that the procedure used by the Secretary for determining the make allowances for the Final Rule, using an average of the California cost of production studies and the Rural Business Cooperative Services (RBCS) study, was sound and that the same procedure should be used as a result of this hearing, using the updated data from both surveys. In calculating an appropriate make allowance, the witness supported addition of a marketing cost of $.0015 per pound to both the California costs and the RBCS costs, as in the Final Rule, and the California value for return on investment used to adjust the RBCS costs in the Final Rule. The witness explained that both of these factors should be included as they are legitimate and necessary costs incurred in operating manufacturing plants.

The witness for IDFA supported inclusion of the California cost studies in the computation of the make allowance; however, the witness stated that the appropriate procedure for computing the make allowance for cheese was to compute a weighted average of the California cost studies and the NCI survey. The witness explained that the RBCS study does not

include all the necessary costs that must be recovered in the make allowance, and that the NCI survey is needed to determine what the additional cost values should be. The costs that the IDFA witness pointed out that are not included in the RBCS survey, but are included in the NCI survey, are general plant administrative costs, such as the plant manager's salary and corporate overhead; return on investment or capital costs; and marketing costs.

The IDFA representative testified that the danger inherent in regulated prices is setting the manufacturing allowance at a level too low to assure that manufacturers will be able to recover their costs of manufacturing finished products and have the money needed to invest in new plants. The witness pointed out that an inadequate make allowance would force manufacturers either to move to areas that do not have regulated pricing or go out of business. At the very least, the witness explained, the manufacturers would not invest in new plants and equipment, which in the long run would cause a decline in the productivity of the dairy industry. A number of briefs filed on the basis of the hearing transcript emphasized the importance of covering all of handlers' costs of manufacturing, and not just average costs.

The IDFA witness explained that if make allowances are established at too low a level, proprietary plants are placed at a competitive disadvantage relative to cooperative-owned plants. The witness explained that since cooperatives do not have to pay their producers the minimum order price, as proprietary plants are required to do, cooperative plants can reduce the prices paid to member producers to make up the difference in cost.

The IDFA witness explained further that the problem with a make allowance established below the amount needed to cover plant costs occurs because the plant sells the finished product at the same price that is used in the formula for establishing the minimum price the plant must pay for the raw material, milk. The manufacturing allowances are the only place the plant has the opportunity to cover its costs, and those allowances are fixed in the formula that determines the raw material price.

The witness for IDFA asserted that there was very little risk in setting a make allowance too high. He explained that if the make allowance is established at a level above plant costs, the additional revenue stream will be corrected through market forces by requiring the plant operators to pay competitive over-order premiums to milk suppliers to obtain an adequate supply of milk.

A witness for Western States Dairy Producers Trade Association, *et al.* (WSDPTA), explained that the most important part of determining a manufacturing allowance is to pick a method and stick with that method. The witness testified that the appropriate method is to use the results of the RBCS study with adjustments to include factors for marketing costs and for capital costs. The witness pointed out that use of the RBCS study is appropriate because the study is voluntary, represents the costs of making the particular commodities, and the plants are geographically widely dispersed. The WSDPTA witness stated that including the results of the California study in the computation of the make allowance for pricing Federal order milk is inappropriate since there is no logical reason for considering the manufacturing costs of plants that do not procure any of the milk that would be priced using those costs.

A witness for the National Farmers Organization (NFO) proposed a variable make allowance using the RBCS make allowances as a base adjusted by the relationship between the particular commodity prices for butter, nonfat dry milk, dry whey, and cheese, and the California Department of Food and Agriculture (CDFA) milk production cost index. The witness explained that a fixed make allowance, as contained in the current pricing system, does not vary with market conditions and creates a situation in which manufacturers will not respond to market signals since the manufacturers will receive a profit no matter what the supply and demand is for the finished products. The witness explained that as long as the make allowance allows manufacturers a sufficient return the manufacturers will continue to produce the finished product even if there is limited demand for the product, thus resulting in a continued low price paid to producers for their milk. The witness characterized a variable make allowance tied to the cost of producing milk as a market-oriented system.

A witness for National Farmers Union (NFU) also proposed a variable make allowance composed of the weighted average RBCS and California manufacturing cost surveys, without a marketing allowance, adjusted by the national average cost of production. The witness explained that the current system does not have market accountability, since there is no incentive for a manufacturer to restrict production when declining prices indicate reduced demand for the product. As a result, according to the witness, the pricing system effectively isolates the manufacturing side of the industry from supply and demand forces, leaving the producers left to bear the burden of changes in supply and demand. The witness explained that the California system, in which manufacturers' production costs are covered by producers through the make allowance, continues to produce a large quantity of lower-valued products because the pricing system makes the manufacturer immune to the supply of and demand for the products. The witness blamed the California make allowance system for the traditionally low milk prices in California, that, he claimed, result in expansion of dairy herds to make up for reduced cash flow. The witness predicted that if the Federal order system follows the same pricing path, the same production patterns as witnessed in California would follow in the rest of the United States.

Most hearing participants agreed that the make allowance should cover the cost of converting milk to a finished manufactured dairy product. However, several participants disagreed with the IDFA contention that there is very little risk in setting the make allowance too high. They argued that if the make allowance is set in excess of the cost to manufacture finished products, the additional revenue would be kept by the manufacturing plants as higher profits and not distributed to the producers supplying milk to the plant. They explained that in many parts of the country there is little if any competition for the dairy farmers' milk and therefore no incentive for a plant to pay above the minimum Federal order price. These plants, according to the witnesses, could be expected to keep the extra make allowance for themselves.

Several witnesses opposed the idea of setting make allowances at levels that guarantee plants a profit, or at least a return on investment, when the dairy farmers supplying milk to the manufacturing plants have no similar assurances for covering the costs of producing milk. These witnesses pointed to the Agricultural Marketing Agreement Act of 1937, Sec. 608c(18), as justification for setting a lower make allowance for plants, resulting in higher milk prices that would come closer to covering dairy farmers' costs of producing milk.

As supported by most of the hearing participants, the make allowances incorporated in the component price formulas under the Federal milk orders should cover the costs of most of the processing plants that receive milk pooled under the orders. In part, this

approach is necessary because pooled handlers must be able to compete with processors whose milk receipts are not priced in regulated markets. The principal reason for this approach, however, is to assure that the market is cleared of reserve milk supplies.

Although the RBCS survey does not include such costs as general plant administrative costs, return on investment or capital costs, and marketing costs, it is a survey that has been done for sixteen years with the same fundamental methodology, and with some continuity of participants. Because the survey is done for the benefit of the participating organizations (cooperatives) to help them identify their costs and compare them with those of their peer group, there is every reason to believe that the costs provided are as accurate as possible. In addition, the years of experience with the survey have enabled USDA to shape the questions to obtain more accurate results.

When the RBCS survey results are adjusted to include the factors that were mentioned above as not included by using the values for those factors from the CDFA survey, the two surveys' costs are comparable, especially considering that the RBCS survey represents manufacturing plants with a wide distribution around the U.S., while the CDFA survey includes only California plants. The CDFA survey is also done every year, and is done according to a published procedure manual, with the costs being audited by personnel employed by the State for that purpose. Although no CDFA employee was available to respond to questions about the conduct of the survey, official notice was taken of the procedure manual and of California publications associated with manufacturing cost data. In addition, several witnesses who are deeply involved with the California dairy industry testified regarding the perceived reliability of the survey results.

In contrast to the RBCS and CDFA surveys, the survey of cheese and whey powder manufacturing costs arranged for by NCI was developed solely for the purpose of establishing costs to be used in determining make allowances for this proceeding. The survey was conducted by persons unfamiliar with the dairy industry among cheese processors who would benefit from having overstated costs included in the results. No one who actually conducted the survey was made available to testify, and although the IDFA witness stated that survey participants would testify regarding their responses to the survey later in the hearing, none of the participating firms' witnesses would respond to questions about their firms' results. Although less weight must be given the NCI survey than either the RBCS or the CDFA surveys for the reasons stated above, the NCI survey's resulting manufacturing costs for cheese are not considerably different from a weighted average of the RBCS and the CDFA surveys. In fact, although the IDFA hearing participants went to great lengths to discredit the RBCS study for use in identifying an appropriate level of manufacturing costs, the hearing record reflects that the NCI survey of cheese and dry whey manufacturing costs used the RBCS 1996 survey results to identify outliers (plus or minus 10 percent) in the study commissioned by NCI.

As a result of the differences in conduct of the three surveys, manufacturing costs used to determine appropriate make allowances for cheddar cheese, butter and nonfat dry milk in this proceeding are calculated primarily from a weighted average of the RBCS and CDFA surveys, with a check against the NCI survey cost of manufacturing cheddar cheese. The cost of manufacturing nonfat dry milk continues to be used as the cost of making whey powder due to the nature of the information in the hearing record about the actual costs of drying whey.

One proposal included in the hearing notice would have eliminated any marketing allowance from the make allowances, and a number of witnesses' testimony objected to the inclusion of return on investment. The American Farm Bureau witness questioned the need for a marketing allowance since producers already pay a 15-cent assessment for promotion and research. A brief filed by the proponent of eliminating the marketing allowance stated that the allowance appears to be an ''adjustment'' or a ''hedge,'' since it is not defined in the final rule.

There was general agreement among those testifying that a marketing allowance should be included in manufacturing costs, but no consensus about the appropriate number. Some of the costs covered by the marketing allowance include maintaining and staffing warehouses, supporting a marketing and sales staff, transporting product to market, and accounting costs associated with the sale of products. The NCI survey identified a marketing cost of $.0011 per pound of product, while the Dairy Farmers of America (DFA) witness stated that DFA's costs were approximately $.0018. The DFA witness testified that because the costs included in the activities designated as marketing generally fall within a common department under common management, it is appropriate to apply the same allowance to each product.

A witness for Northwest Dairy Association, a cooperative association in the Pacific Northwest, stated that their marketing costs are $.0026, but identified costs associated with the aging of cheese as included in that number. Since the NASS survey price does not include cheese intended for aging, the marketing allowance certainly should not include costs of aging cheese. The Associated Milk Producers, Inc., (AMPI) witness used a $.0024 marketing allowance in the calculation of AMPI's proposed make allowance for nonfat dry milk. The witness for Agri-Mark, Inc., a large Northeast cooperative association with several processing plants, stated that Agri-Mark's estimates of marketing costs ranged from $.0025 to $.005.

The costs identified as those included in a marketing allowance are necessarily incurred in getting a product to market, and are not related to the consumer education and advertising activities covered by the National Dairy Board assessment. Since the marketing cost determined by NCI is the only one of the estimates included in the hearing record that is supported by a survey, and it varies from the $.0015 rate included in the Final Rule by only 4 one-hundredths of a cent and applies only to cheese and dry whey, there seems to be no solid basis for making any change to the current marketing allowance.

Some producer witnesses objected to the inclusion of any allowance for return on investment in manufacturing allowances on the basis that dairy farmers are assured of no such return. The CDFA manufacturing cost surveys include allowances for depreciation, included in the non-labor processing costs; and for return on investment, which represents the opportunity cost of the processors' resources invested in the business. These costs are supported by audited data.

Both the marketing allowance and return on investment factors should be included in the manufacturing allowances provided in the component price formulas at the rates supported by the California data. If processors are not provided enough of a manufacturing allowance to market the product they process, or to earn any return on investment, they will not continue to provide processing capacity for producers' milk. At the same time, the manufacturing allowances incorporated in the formulas will not provide enough of an allowance to assure that every processor, no matter how inefficient or high-cost, will earn a profit. Allowances set at such a level certainly could result

in the situation warned of by producer groups in which processors manufacture greater volumes of product than the market demands because they are guaranteed a profit on all their production. As a result, the only way to market all of the product would be to reduce prices, with a profit still locked in through the make allowance, which would result in decreasing prices paid to producers. In addition, manufacturers who are assured a profit on all of their output would have no incentive to make a sufficient quantity of milk available for fluid use—a basic goal of the Federal milk order program.

One area addressed by several hearing participants in testimony and in briefs as appropriate to consider in establishing make allowances or yields was the loss of milk components during manufacturing processes. The orders have always provided an allowance for shrinkage, and continue to do so, but inflating costs of production or reducing yield factors to reflect shrinkage would not properly reflect the value of producers' milk used in manufactured products. Processing costs determined by the surveys described above, which underlie the manufacturing costs incorporated in the pricing formulas, are expressed in cents per pound of end product manufactured, not in the cost per hundredweight of milk of converting milk to manufactured products. The component pricing formulas are based on the content of those components in the finished products for which a manufacturing cost per pound has been established. Both the CDFA and RBCS cost surveys allocate all plant costs to actual end product, a process which should take shrinkage into account. Similarly, the yield factors in the formulas refer to the amount of finished product resulting from the processing of a given volume of input. Both of these factors in the pricing formulas include consideration of shrinkage.

The detailed explanation of each product's manufacturing allowance is included with the description of its primary component's pricing formula later in this decision.

b. Class IV Butterfat and Nonfat Solids Prices.

Class IV Butterfat Price. This decision continues to use the NASS price for Grade AA butter for calculating the Class IV butterfat price, and changes the manufacturing allowance in the butterfat price formula by 1/10 of a cent per pound of butter. The .82 divisor in the price formula is unchanged.

Several proposals were heard that would reduce butterfat prices, either by reducing the butter price used in the computation of the butterfat prices for all classes, or subtracting a fixed amount from the butterfat price computed for Class IV. Proposals also were made that would change the make allowance used in calculation of the butterfat prices. There were no proposals to change the butterfat divisor of .82, although one witness representing a western cooperative association suggested that it be reconsidered as he felt it didn't include a shrinkage factor.

Product Price (Butter). Several witnesses for proprietary processor proponents of the proposal to deduct six cents from the butter price before computing the butterfat price stated that historically the value of butterfat in the Federal milk orders has been based on the price of Grade A butter. The witnesses explained that an equivalent price determination had been issued in 1998 when the CME discontinued trading Grade A butter that nine cents would be subtracted from the Grade AA butter price for use in calculating Federal order butterfat prices. This equivalent price, according to the witnesses, was found to be ''essential'' to the continued operation of the Federal milk order program and continued the policy of basing butterfat pricing under the Federal milk orders on a value below that of Grade AA butter.

The witnesses complained that under Federal order reform the butterfat value is determined by using the NASS Grade AA price of butter, which effectively increases the butterfat value under Federal milk orders. According to proponents' calculations, the increase does not amount to a full nine cents, but is tempered by the use of the NASS Grade AA price, which has averaged approximately three cents below the CME Grade AA price, in the butterfat pricing formula. Therefore, they stated, the actual increase in the butter price used to calculate butterfat prices is approximately six cents. According to the witnesses, subtraction of six cents from the NASS butter price would return the relationship between the butterfat value under the orders and the selling price of butter to the relationship that existed prior to Federal order reform.

Several witnesses explained that when handlers must pay for butterfat on the basis of the Grade AA butter market they cannot then sell cream or finished products at a price that would allow them to recover their costs. They testified that cream is sold at a price that is termed a ''multiple'' of the butter price, and that the multiples used when the butterfat price was calculated from the Grade A butter price have not adjusted to the new pricing formula using Grade AA butter.

The IDFA witness pointed out that the IDFA proposal to subtract six cents from the NASS Grade AA butter price would apply not only to the butterfat formula for Class II, Class III, and Class IV but would apply to the advance butterfat formula used for computing the Class I butterfat price. The witness testified that by applying the same formula to all classes of butterfat the current relationship between the class prices would be maintained. The witness contended that there is no justification for changing the relationships between the class prices, particularly if the adjustment would widen the class price spreads or, in effect, increase the Class I and Class II differentials.

Witnesses for National Milk Producers Federation (NMPF) and several large cooperative associations testified in support of NMPF's proposal to reduce the calculated butterfat price by six cents, with the reduction applied to Class IV butterfat only. Under this proposal, the computation of the butterfat prices for other classes would not contain the six-cent adjustment. Several witnesses representing cooperative associations that process butter explained that butter manufacturers incur additional costs when procuring cream used for manufacturing butter as opposed to the cost of converting producer milk to butter. The witnesses explained that these additional costs include transportation, additional handling, and additional pasteurization. The witness for Land O'Lakes (LOL) testified that the additional costs amounted to 4.57 cents per pound of butterfat for transportation and .4 cents per pound for receiving, storing, and repasteurization. A witness for Agri-Mark stated that Agri-Mark's transportation costs are slightly less than LOL's, probably due to the proximity of the Agri-Mark plant to the sources of cream, but that the other additional costs are slightly higher than the LOL costs, at .5 cents per pound of butterfat.

The proponents of reducing the Class IV butterfat value also referred to the computation of the California Class 4a butterfat price, which involves a subtraction of 4.5 cents per pound from the CME Grade AA butter price to adjust for the costs of moving butter from the west coast to the Midwest.

Those parties who favored reducing the butter price before using the butterfat price formula to calculate any of the butterfat prices disagreed vehemently with the proposal to reduce only the Class IV butterfat price. They

argued that such a reduction would distort the relationship between the Class II and Class IV prices, resulting in a greatly-increased price for Class II butterfat in relation to Class IV butterfat.

Specifically, the projected increase in the Class II-Class IV butterfat price difference was cited as 6.7 cents per pound (from the current difference of .7 cents). These parties argued that butterfat values would most appropriately be reduced to the same degree in all classes.

The Class IV butterfat price should be computed by subtracting a make allowance of .115 dollars per pound from the monthly average NASS Grade AA butter price and dividing the result by .82. The Class II butterfat price should continue to be the Class IV butterfat price plus .007 cents, while the Class I butterfat price will be the higher of the advance Class III and advance Class IV butterfat prices plus the applicable Class I differential.

Contrary to the belief stated by some witnesses, whether qualified experts or not, the use of the Grade AA butter price for computing the butterfat price under Federal order reform was not an ''oversight.'' Trading of Grade A butter on the CME was ended (not by USDA, as implied in one brief, but by the CME) because the volume of Grade A butter traded was not great enough to warrant maintaining a trading venue. Although one brief argued that the Grade A butter price represents a minimum price, and that there is no need for concern that there will not be an available market for Grade A and Grade B butter, with the end of trading in Grade A butter on the CME there is no published (or any other known) source for obtaining a price for Grade A butter.

The use of the Grade AA butter price for establishing butterfat prices is appropriate since that is the only grade of butter that has significant enough trading volume to warrant a publicly-reported price. Grade AA butter prices are the only butter prices regularly available, and represent the vast majority (about 95 percent) of the butter sold. Although the ''multiples'' of the butter price apparently had not adjusted to the use of the Grade AA price during the first 4 months of experience under the revised orders, and probably should not be expected to adjust during the period in which this proceeding is under consideration, the marketplace should, in time, make the needed adjustments.

Various witnesses estimated that Grade A and Grade B butter combined make up 3–7 percent of the butter in the U.S. Although a witness noted that the Minnesota-Wisconsin (M–W) price for non-Grade A milk continued to be surveyed even after the percentage of milk eligible for the survey had fallen below a 5-percent level, it was widely recognized for some time that a pricing alternative to the M–W must be found because the M–W eventually would no longer provide a representative price for a large volume of unregulated milk. Similarly, with the decline of Grade A butter (and the unavailability of prices for that product), the only alternative available for determining price is Grade AA butter. A finding in the equivalent price determination that a Grade A butter price was ''essential'' to continued operation of the orders referred solely to the fact that the Grade A price was specified in all of the orders at that time, not that the butterfat value under Federal milk orders could never be based on any other price.

Making an adjustment to a clearly valid price series to approximate a price series that has been discontinued for several years due to insufficient volume for trading is inappropriate. In any case, it is impossible to determine what the current difference between these prices would be because there are no reports of the Grade A price available. The vast majority of butter made and sold in the U.S. is Grade AA, and that is the appropriate product to which to look for a value of butterfat used in butter. The 3-cent average difference between the CME and NASS butter prices makes up ⅔ of the 4.5-cent adjustment made by California in calculating the value of butterfat used in butter. An additional 6 cents deducted from the Class IV butterfat price calculated from the NASS price would much more than make up the remaining 1.5-cent difference. Also, the 4.5-cent California adjustment is made for the purpose of reflecting the cost of moving butter from California to Chicago. The butterfat price calculated under the Federal order program is not intended to apply to only one state. The NASS price is a nationwide survey, and likely includes a significant representation of California butter prices. If there are additional costs involved in making butter, they would more appropriately be included in the make allowance for butter.

Make Allowance (Butter). The make allowance factor in the Class IV butterfat formula should be derived from a combination of the manufacturing costs determined by the California Department of Food and Agriculture (CDFA) and by USDA's Rural Business Cooperative Service (RBCS), as they were in the final decision. The CDFA cost data is divided into two groups representing high cost and low cost butter plants, with the 4 plants in the high cost group manufacturing, on average, about the same average number of pounds of butter as the 7 plants in the RBCS study. Use of the data for the California high-cost group of butter plants is more appropriate than use of the weighted average cost for all of the CDFA plants because it is more likely that the high-cost plants, like the plants in the RBCS survey, serve a predominately balancing function.

When the RBCS data is adjusted to reflect the same packaging cost, general and administrative costs, and return on investment as the CDFA data for the high cost group, and a marketing allowance of $0.0015 is added to both sets of data, the weighted average of the two data sets is $0.115. This butter manufacturing allowance is very close to the current allowance of $0.114, and should continue to provide a representative level of the costs of making butter in plants that serve a balancing function.

The increased costs of making butter, not including transportation, cited by the proponents of reducing the Class IV butterfat price are expected to be included in this manufacturing allowance, which exceeds the low cost group in the CDFA survey by 3 cents per pound. The only class of use for which adjustments for transportation have regularly been included under Federal order regulation is Class I. Assuring that the order provides an allowance for moving milk for use in manufactured products would interfere with provisions designed to assure an adequate supply of milk for fluid use.

Yield (Butter). Although one witness suggested that the divisor in the butter price formula that reflects the butterfat content of butter be reconsidered, he did not indicate any number more appropriate than the .82 divisor used in the current formula. There was no other testimony in the record questioning the butter content factor. In fact, the only data in the record applicable to the issue was a CDFA report on butter and powder yields at California plants in 1996 that was included in an exhibit. This report shows a 1.2213 weighted average butter yield (1 pound of butterfat results in 1.2213 pounds of butter), which corresponds to the use of the .82 divisor.

The record does not support adoption of a Class IV butterfat price that is not reflected directly in the Class II butterfat price. There was testimony from several witnesses that the current Class IV-Class II price relationship is rational and appropriate, and an adjustment to the Class IV butterfat price that is not reflected in the Class II butterfat price would disrupt the current relationship.

In addition, it would seem reasonable that some of the extra costs claimed by butter manufacturers, such as transportation costs for supplemental cream supplies, butterfat standardization of outside cream sources, and additional pasteurization would be as applicable for Class II manufacturers of high-fat products using surplus cream as for butter makers. Accordingly, reduction of the Class IV butterfat price only is not considered appropriate.

Class IV Nonfat Solids Price. This decision maintains the use of the NASS survey price reported for nonfat dry milk and increases the make allowance for nonfat dry milk from 13.7 cents to 14 cents per pound of nonfat dry milk. In addition, the 1.02 divisor used in the current nonfat solids price formula to reflect the incorporation of dry buttermilk (with a lower product price and higher make allowance) in the nonfat solids price formula is changed to 1; or, in other words, eliminated.

Six proposals to change some part of the nonfat solids price formula were considered at the hearing. Three of the proposals dealt with the manufacturing allowance for nonfat dry milk (NFDM), with two of the proposals advocating use of the RBCS survey results and one proposal supporting an increase in the make allowance. The other three proposals supported changes in the yield factor of the nonfat solids price formula that would reflect greater powder yield from a pound of nonfat solids. Two of the proposals to change yield factors included using CME NFDM prices instead of the NASS survey. As discussed earlier in this decision, the product prices used in the component pricing formulas should continue to be obtained from the NASS survey.

Product Price (Nonfat dry milk). No proposals were considered that would have changed the product price used in the nonfat solids price formula, and the record contains no basis for making any change in this formula factor.

Make Allowance (Nonfat dry milk). At the time the hearing notice was issued, the most recent RBCS data were not available, and those costs were not specified in the proposals. By the time the hearing was held, however, the RBCS data had been released and were included in the information introduced at the hearing. National Milk Producers Federation (NMPF) supported continued use of a weighted average of the California and the RBCS manufacturing cost surveys, with inclusion of a marketing allowance and the California factor for return on investment. NMPF proposed that the NFDM make allowance be $0.140.

South East Dairy Farmers Association also proposed that the RBCS survey be used to determine a make allowance for NFDM, but did not propose that a marketing allowance be included. The necessity of including a marketing allowance is discussed earlier in this decision.

Associated Milk Producers, Inc. (AMPI), proposed that the NFDM manufacturing allowance be increased from $0.137 to $0.1563, a rate based on AMPI's cost of making NFDM at its own three plants in the upper Midwest over a 5-year period. The AMPI witness stated that in addition to a processing and packaging cost of $0.1254, the make allowance should include a marketing allowance of $0.0024 and return on investment of $0.026, for a total allowance of $0.1538, modified from the level proposed in the hearing notice. The witness testified that the three AMPI plants operate at approximately 80 percent of capacity.

On the basis of the data and testimony included in the hearing record, the manufacturing cost level that appears to be most appropriate for use in the pricing formula for nonfat solids is $0.14. This value is calculated by using a weighted average of the RBCS survey and the two less-cost California groups of plants, adding the California General and Administrative costs and Return on Investment expenses for those two groups to the RBCS numbers, and a $0.0015 marketing allowance to both sets of data. The basis for using the two lower-cost groups of California plants are that the mid-cost group is of a similar average size as the group included in the RBCS survey, and that the lowest-cost California group has a very similar total cost to the mid-cost group. These three groups of plants (the RBCS plants and the two California groups) are similar enough in size and cost to consider as fairly representative, and should encompass those plants that perform a market balancing function. The highest-cost California group should not be included, as its average cost is more than ten cents per pound of NFDM above the RBCS group or either of the other two California groups.

The AMPI cost numbers cannot be included in the weighted average since the number of pounds of NFDM associated with those costs is not available. When the AMPI marketing allowance and return on investment estimates are replaced with the more moderate numbers used in the make allowance calculation, the AMPI manufacturing costs do not differ much from the other two sources. This is true even of a comparison between the RBCS data and the AMPI data despite the wide discrepancy in the capacity utilization percentage estimates for the two data sets (80 percent for the AMPI plants versus less than 50 percent for the plants in the RBCS survey). Inclusion of the AMPI costs in the RBCS survey would have included a larger representation of NFDM manufactured outside California. However, the record indicates that a high percentage of the NFDM manufactured in the U.S. comes from California, and the proportion of cost data representing California in the manufacturing allowance is reasonable.

Yield (Nonfat solids). A considerable portion of the testimony dealing with the nonfat solids pricing formula pertained to the divisor of 1.02, which is intended to reflect the amount of nonfat solids in NFDM, with an adjustment for the small amount of buttermilk powder that is made in conjunction with the manufacture of butter and NFDM. Testimony by a number of witnesses asserted that the product price minus the make allowance should be either multiplied by a number greater than 1 (such as 1.02) or divided by a number smaller than 1 (such as .99 or .975) to reflect the fact that more than 1 pound of NFDM can be expected to be manufactured from 1 pound of nonfat solids due to the moisture content of NFDM.

Many of the hearing participants supported the current 1.02 divisor, and expressed understanding of the approach of adjusting the ''yield'' of NFDM to compensate for the fact that some of the powdered product made from Class IV milk is buttermilk powder (BMP). Although 1.03 to 1.05 pounds of NFDM generally can be obtained per pound of nonfat solids, the formula also recognizes a lower value and higher manufacturing cost for BMP.

Several witnesses correctly assessed an alternate solution to the dilemma of calculating a component price from two commodities with different prices and different make allowances as one requiring addition of dry buttermilk as another component price in the Federal milk order pricing system. As described by at least one witness, such an undertaking would require adding dry buttermilk to the NASS price survey, determining a separate make allowance, and calculating a yield factor. This procedure would be a burdensome undertaking for very little benefit, since dry buttermilk represents only about 5 percent of the dry products resulting from the manufacture of butter and nonfat dry milk. The issue that remains is how best to reflect the value of nonfat solids used in both NFDM and BMP in the same component pricing formula.

The IDFA witness testified that for the 19-month period beginning with September 1998, the central states' dry buttermilk average price had averaged $0.798 per pound, while the central states' ''mostly'' price for NFDM averaged $1.043. The Land O'Lakes witness similarly testified that the 1999 Northeast ''mostly'' price for NFDM averaged $1.0389, while the BMP price was $0.7686 per pound. On the basis of these numbers, it would appear that the price of BMP is roughly 75% that of NFDM. However, comparison of BMP and NFDM prices for the years of 1996 through 1999 and into 2000 reflects a more complex relationship between these prices than the hearing testimony would indicate. The BMP price as a percentage of the nonfat dry milk price (using Western prices) was 100.9% in 1996, 94.5% in 1997, 88 percent in 1998, and 71% in 1999. During the first third of 2000, BMP prices generally averaged less than 70% of NFDM prices. As the year 2000 has progressed, however, the percentage has increased, being at levels up to 100% in late July.

The witness representing Agri-Mark stated that Agri-Mark employees engaged in manufacturing operations had estimated that the costs of producing BMP range from 1 to 3 cents more per pound than those of producing NFDM. Given that the manufacturing costs estimated by the Agri-Mark witness for other products were somewhat higher than those supported by the bulk of the hearing record, it is reasonable to consider the extra cost of manufacturing BMP to be generally not more than 2 cents in excess of the cost of manufacturing NFDM. In addition, it is difficult to justify increasing the powder make allowance for all of the powdered product represented in the make allowance since the RBCS witness testified that manufacturing costs of BMP manufactured at the plants included in the RBCS survey are included in the powder costs reported by RBCS.

Testimony regarding actual yields of NFDM and BMP were provided by only one witness representing a manufacturing plant operator. The numbers provided, while not complete enough for an exact accounting of the ultimate disposition of the plant's receipts of producer milk, indicate strongly that the approximate loss of nonfat solids used in the manufacture of NFDM at the specific plant was 3 percent, with 16 percent lost in the manufacture of BMP; a weighted average loss of more than 3.5 percent. In comparison, data published by the State of California showed a weighted average loss of solids not fat of 2.13 percent in the manufacture of butter and powdered products.

The California data indicate a weighted average powder yield of 1.0252 pounds of NFDM and BMP from 1 pound of nonfat solids. One witness discounted this data by observing that the ''high'' California yield was reported as 1.0406, which would represent a higher-than-allowable moisture content. This number is undoubtedly influenced by the ''high'' reported BMP yield of .0749.

As noted above, the general impression conveyed by testimony in the hearing record, that BMP is worth considerably less than NFDM and that the cost of processing it is significantly greater than that of processing NFDM, is misleading. The average BMP price over the period 1996–July 2000 is approximately 87 percent of the NFDM price, and the cost of manufacturing BMP is, on the basis of the information available, no more than 2 cents in excess of the $0.14 recommended as the NFDM make allowance. These small adjustments to the product price and the make allowance used in the nonfat solids formula apply to little more than 5 percent of powder manufactured. It is apparent from the information contained in the record of this proceeding that the 1.02 factor, as a divisor, is excessive.

The following information from the hearing record was used to determine a multiplier or divisor for the total nonfat solids pricing formula that would result in a minimum price for nonfat solids while incorporating the data and testimony in the record about the manufacture of NFDM and BMP. To assure that the result represents a minimum price, the low or high areas of ranges of numbers related to the manufacture of these two products were used. The CDFA report on butter and powder yield in California plants in 1996 was used in making some of the calculations regarding this factor.

a. The price of BMP represents roughly 80 percent of the price of NFDM (80 percent is less than the average historical relationship of these prices over the past 5 years).

b. The cost of manufacturing BMP is not more than 2 cents greater than the make allowance for manufacturing NFDM.

c. Using a theoretical yield of 1.03 pounds of powder containing 3 percent moisture made from milk containing 8.62 percent nonfat solids would result in .054 pounds of BMP and .976 pounds of NFDM.

d. Adjusting the theoretical yield of 1.03 pounds to minimal yield of 1.01 pounds (the ''low'' yield in the CDFA report) and prorating the BMP and NFDM to 1.01 pounds instead of to 1.03 pounds, the amount of BMP manufactured from a pound of nonfat solids used in butter/powder is approximately .053 pounds. When the NFDM yield is prorated, the resulting minimum yield is .957 pounds.

Using a NFDM price of $1.03 per pound, a make allowance of $0.14 cents per pound of NFDM, and a divisor (or multiplier) of 1, the resulting calculation is: $1.03 − $0.14 = $0.89 per pound of nonfat solids. The same result is achieved through a more complicated calculation using both product prices and make allowances, as follows:

Buttermilk powder:

($1.03 × .80) − $0.16 = $0.664; $0.664 × .053 = $0.03519 + Nonfat dry milk:

$$\$1.03 - \$.014 = \$0.89;\ \$0.89 \times .957 = \frac{\$0.85173}{\$0.88692}$$

(Rounded to $0.89)

Therefore, no multiplier or divisor is necessary in this formula.

c. Class III Butterfat, Protein and Other Nonfat Solids Prices

In a change from the current orders, a Class III butterfat price is calculated from the value of butterfat in cheese rather than using the same butterfat price as is used in Class IV that is calculated from the value of butter. The Class III butterfat price, like the protein price, is calculated to represent the value of the component in the NASS cheddar cheese price. The only modification made to the specifications of the cheese price, currently a weighted average of the prices of cheese sold in 40-pound blocks and 500-pound barrels (with a 3-cent addition to the barrel price) is to adjust the price of 500-

pound barrels to 38 percent moisture instead of the 39 percent moisture price currently reported by NASS.

This decision would reduce the make allowance for cheese from 17.02 to 16.5 cents per pound. Using the Van Slyke cheese yield formula to represent the effects of butterfat and protein on cheese yield, the cheese price minus the make allowance is multiplied by 1.582 to calculate the Class III butterfat price, while the cheese price minus the make allowance is multiplied by 1.405 to calculate the protein price. The portion of the current protein price formula that adjusts the protein price to accommodate the differential value of butterfat in cheese, as opposed to butter, is eliminated. Both the protein and butterfat components of milk used to make cheese should track the cheese price much more closely than has been the case using the current Class III component pricing formulas.

The other nonfat solids price would continue to be calculated by subtracting the make allowance from the NASS-reported price for dry whey and dividing by .968. However, the make allowance is increased from 13.7 cents to 14 cents per pound of dry whey.

Class III Product Price (Cheese). Several proposals included in the hearing notice would, if adopted, change the NASS cheese price used in the Class III pricing formulas. One proposal would limit the cheese prices included to 40-pound blocks reported by the Chicago Mercantile Exchange (CME), while another would add 640-pound blocks to the prices surveyed by NASS for inclusion in the cheddar cheese price. A third proposal would replace the current 3-cent price adjustment between 500-pound barrel prices and 40-pound block prices to a value that reflects the actual differential industry cost of making 40-pound blocks over 500-pound barrels. Still another proposal would adjust 40-pound block cheese prices for moisture, as 500-pound barrel prices are adjusted.

As discussed above, CME commodity prices should not be used as the basis for calculating component prices. Eliminating 500-pound barrels, which represent approximately two-thirds of the cheese represented in the NASS survey, from calculation of the market value of cheddar cheese would reduce greatly the degree to which the current product prices represent U.S. cheddar cheese prices. The record of this hearing provides no support for relying solely on prices for 40-pound blocks to identify a market price of cheddar cheese.

The NASS weighted average cheese price should not include the value of 640-pound block cheese. Several parties testified that including 640's in the cheese price computation would improve the reliability of the average cheese price by adding a substantial quantity of cheese to the price survey. Witnesses' estimates of the percentage of U.S. cheddar cheese production represented by 640-pound blocks ranged from 20 to 27 percent. Witnesses testified that the increased volume would better reflect the true value of cheese and additionally would reduce the potential for price distorting manipulation by individual handlers.

Opponents to inclusion of the 640's in the cheese price computation explained that the vast majority of 640's are made on a custom basis to customers' specifications, and therefore are not sufficiently uniform to have a standard identity.

Without a standard identity for the product, standardized pricing cannot be developed. At the beginning of the NASS survey, price data for 640-pound blocks initially was collected, but was discontinued due to lack of volume and too few participants to allow disclosure of data. Even earlier (1995–96), the former National Cheese Exchange attempted to include trading in 640-pound blocks, but discontinued doing so because of lack of interest. Several of the witnesses who testified in favor of including 640-pound blocks in the NASS survey also indicated that the 640-pound blocks manufactured by their organizations are used internally. Thus, the prices represented by these products would not be eligible for inclusion in the NASS survey.

Several witnesses at the hearing and comments contained in post-hearing briefs advocated reducing the three-cent adjustment that is added to the barrel price for computing the weighted average cheese price to one cent or eliminating it altogether. The witnesses argued that since the barrel cheese price is adjusted to 39 percent moisture and block cheese is approximately 38 percent moisture, at least 2 cents of the observed difference in price between 40-pound blocks and 500-pound barrels is due to moisture and has nothing to do with actual differences in costs. In fact, they argued that there is no difference in packaging costs between block and barrel cheese.

The witness for DFA, a cooperative that manufactures cheese packaged in both 40-pound blocks and 500-pound barrels, testified that three cents is an acceptable and reasonable spread between blocks and barrels and that there is no compelling reason to change the three-cent addition to the barrel price. The witness for LOL testified that the three cents is an appropriate difference between blocks and barrels and that adding three cents to the barrel price when computing the weighted cheese price is an appropriate adjustment. A brief filed on behalf of DFA and the Association of Dairy Cooperative in the Northeast argued that the record supports a conclusion that the 3-cent adjustment of the barrel price is attributable to volume utility and cost differences in packaging and handling.

The National Cheese Institute, which proposed reducing or eliminating the 3-cent adjustment, argued that the adjustment should include only the actual cost differences involved in manufacturing and packaging the two sizes of cheese. Although a number of witnesses representing cheese manufacturers testified in favor of reducing or eliminating the adjustment, including one whose employer makes both sizes of cheddar, none of them addressed the actual cost differences of packaging and manufacturing 40-pound blocks and 500-pound barrels. Instead, the only testimony that was offered involved attributing a 2-cent difference to the moisture-adjusted value of the two sizes of cheese packages.

If the difference between the block and barrel prices were due to the difference in moisture, the difference between the prices should widen as the cheese price increases since the moisture adjustment is based on the price and moisture of the cheese. An analysis of historical cheese prices indicates that the difference between the block cheese and barrel cheese prices does not change with changes in price level. In fact, three of the largest differences between the block and barrel prices occurred at approximately the 40-month NASS weighted average monthly prices.

The record contains no basis for concluding that the actual cost of manufacturing and packaging the two sizes of cheese is not the historical 3-cent price spread. In fact, during the period September 1998 through June 2000 the difference between the block and barrel prices has been 4.4 cents per pound. The record of this proceeding does not support reducing or eliminating the 3-cent addition to the barrel cheese price.

An expert witness, and several other witnesses, testified that the moisture content of the cheese used for determining the NASS cheese prices and the moisture content used in the Van Slyke cheese yield formula used for computing the ''yield'' coefficients in the protein formula should be the same. The witnesses explained that failure to align the formula and the moisture

content represented by the cheese price survey would result in over or understating the formula coefficients.

The expert witness explained that the barrel cheese price is reported at 39 percent moisture after being adjusted from the actual moisture, while the block cheese price is reported at an unknown moisture level. The only testimony dealing with the actual moisture level of block cheese indicates that it averages about 38 percent.

The coefficients originally used for determining the Class III protein price and the Class III butterfat price, and used in the formulas in this decision, were derived from using the Van Slyke cheese yield formula at 38 percent moisture. Therefore, it is appropriate to use cheese prices that reflect cheese containing 38 percent moisture. The current practice of using the 40-pound block cheese price unadjusted for moisture and the 500–lb barrel price adjusted for moisture should be continued, but with the barrel price adjusted to 38 percent moisture instead of 39.

The hearing record provides no basis for altering the composition of cheese prices surveyed for use in the Class III pricing formulas, or for changing the calculation of the NASS weighted average cheese price, other than the moisture adjustment to 38 percent for 500-pound barrels.

Several witnesses testified that types of cheeses other than cheddar should be included in the NASS price survey as a more comprehensive basis for identifying a cheese price, although such a proposal was not included in the hearing notice. The cheddar cheese included in the NASS survey meets certain standard criteria that makes prices for the reported cheese sales comparable. If the survey included other descriptions of cheddar and other types of cheese, such as mozzarella, it would not be possible to consider the reported price as representative of the value of any particular product. Further, the manufacturing costs surveyed are, to a great extent, limited to the costs of processing cheddar cheese.

Class III Make Allowance (Cheese). Several proposals to adjust the manufacturing allowance for cheese were included in the hearing notice and considered at the hearing. The NMPF witness testified that the organization had determined that the most appropriate cheese make allowance would be a weighted average of the updated RBCS and CDFA surveys, with addition of a marketing allowance, and modified the Federation's proposal accordingly, supporting adoption of a cheese make allowance of $0.1536. Several witnesses representing cooperative associations supported the NMPF $0.1536 proposal and the inclusion of cost factors for a marketing allowance and return on investment. One witness testified that the make allowance should be based on data from actual plant operations through the surveys conducted by RBCS and CDFA and testimony from individual plant operators; that it should include California data, as California plants represent a large proportion of cheese manufacture; and that it should be generous enough to assure adequate plant capacity for continued manufacture of cheese.

The witness representing NCI testified that the cheese make allowance should be no less that $0.1687, the weighted average of the NCI-sponsored and CDFA surveys with the addition of a marketing cost of $0.0011. He stated that such an allowance would represent the production of 24 cheese plants and 53% of U.S. cheese. Several cheese manufacturer representatives supported use of the NCI-supported make allowance, stressing the importance of adoption of an allowance that covers *all* of the costs of manufacturing cheese.

A witness representing Farmers Union and the American Farm Bureau witness both supported adoption of a make allowance of $0.1521, as a weighted average of RBCS and CDFA data, and a witness for National Farmers Organization supported a make allowance of $0.141 composed of the RBCS cost with the addition of a marketing allowance and return on investment.

The make allowance used for computing the Class III protein and butterfat prices, $.165, was determined by combining the CDFA plant survey with the RBCS survey. As was pointed out by several witnesses at the hearing, several cost factors that are necessary to maintain the viability of processing plants are not represented in one or both of the RBCS and the CDFA studies. These cost factors include marketing costs, return on investment, and general and administrative expenses. A discussion of these expenses is included earlier in this decision. Neither the CDFA nor the RBCS survey included a marketing cost, so the $0.0015 marketing allowance was added to both studies. In addition, the CDFA return on investment cost of $0.0103 and general and administrative expense of $0.0190 was added to the RBCS study, which included neither factor. The resulting adjusted costs for each survey are $0.1708 for RBCS and $0.15996 for CDFA. A weighted average of the two studies was computed using the respective adjusted make allowances and the pounds of cheese reported in each study; 466,396,548 for the CDFA study and 633,142,812 for the RBCS study, to arrive at the Class III price make allowance of $0.165.

Class III Butterfat Price (and effect of butterfat on cheese yield). Testimony at the hearing and analysis of the relationship between the current cheese, butterfat and protein prices revealed that the current Class III pricing formulas cause inequities in producer payments based on the relationship between producers' butterfat and protein tests. The inequities were attributed to the use of the 1.28 factor used in the portion of the protein price formula that is designed to incorporate the butterfat value of milk used in cheese that is not already accounted for by the Class III and IV butterfat price. Further analysis also revealed that there is very little relationship between the current butterfat price and the cheese price or between the current protein price and the cheese price.

Under the current system, market distortions occur due to using the Class IV butterfat price, calculated from the value of butterfat in butter, to also represent the value of butterfat in cheese, (Class III), and trying to incorporate the difference in value in the protein price. As a result, instances have occurred when the protein price declines while, at the same time, the cheese price is increasing. This outcome is completely contrary to the concept of pricing components on the basis of the value of the products in which they are used. The same inverse price scenario has affected the butterfat price, with occurrences in which the Class III butterfat price increases because the butter price has increased while the cheese market has been declining. For example, in April of 2000 the protein price was $1.7399, based on a cheese price of $1.1011, while in May the cheese price increased slightly to $1.1022 but the protein price declined approximately $0.18 to $1.5514. The decline in the protein price was directly attributable to the increase in the butter price and the resulting increase in the butterfat price.

The reasons for using the same butterfat price in Class III and Class IV under Federal order reform have been outweighed by the outcome of that decision. The pricing concept of reflecting the value of a manufactured product in the prices for the milk components that are instrumental in the yield of that product require that the Class III protein and butterfat prices be tied more directly to their value in the cheese that is produced using those

components. Therefore, it is necessary to separate the value of butterfat used in the manufacture of cheese from the value of that component in butter. The pricing system contained in this decision will eliminate the distorted relationships between the Class III butterfat and protein prices and the cheese price.

Calculating the Class III butterfat price on the basis of the effect of butterfat on cheese yield, as described in the Van Slyke cheese yield formula, rather than from the butter price makes alternative uses based on price differences clearly visible. The Class III butterfat price formula should be:

(NASS weighted average cheese price − .165) ×1.582. Adoption of more logical relationships between the value of butterfat and its various uses will allow butterfat to move to the use with best return.

Protein price (and effect of protein on cheese yield). The method of computing the protein price described in this decision results in a protein price that, like the recommended Class III butterfat price, has a 100 percent correlation with the cheese market. In addition, the recommended formula eliminates many of the problems discussed at the hearing concerning the current formula. The protein price formula will be modified by removing the butterfat portion of the formula. Removal of the butterfat pricing factor from the protein price formula eliminates the contentious issue of the 1.28 butterfat-to-protein ratio.

As contained in this decision, the protein price will be: (NASS weighted average cheese price − .165) ×1.405.

Class III—Other Nonfat Solids Price (Dry Whey)

This decision continues to calculate the price of the nonfat solids other than protein in milk used to make cheese by subtracting a manufacturing allowance from the NASS dry whey price and dividing the result by the content of these ''other nonfat solids'' in dry whey. No change is made, or was proposed, in the dry whey product price or divisor in the formula. The manufacturing allowance for dry whey is increased from 13.7 cents to 14 cents per pound of dry whey to reflect the increase in the NFDM make allowance. The decision would snub the other nonfat solids price at zero rather than allowing it to become a negative factor in determining payments to producers.

The hearing included several proposals that would change the dry whey or other solids price formula by changing the make allowance. Although the hearing notice included a proposal to use the CME average dry whey price, the proponent withdrew support for the proposal when it became apparent that the CME has no cash exchange market for dry whey. The NASS survey that currently is being used to identify commodity prices has included price data on dry whey since September 1998. There were no proposals to change the 0.968 yield factor in the other solids price formula. The 0.968 factor reflects the solids content of dry whey, given a 3.2 percent moisture content.

Make Allowance (Dry Whey). Since the most recent CDFA and RBCS cost surveys did not include costs for drying whey, there is no information from those two studies to use for computing the dry whey make allowance. A witness from the National Milk Producers' Federation suggested using the nonfat dry milk manufacturing cost allowance for dry whey since both products involve similar processing equipment, and then adding $0.01 per pound to reflect the additional energy and higher equipment costs incurred in drying whey. Since the proposed make allowance for nonfat dry milk is $0.140, this procedure would result in a dry whey make allowance of $0.150.

Dairy Farmers of America (DFA) proposed a dry whey make allowance of $0.1478 per pound based on costs at its plant at Smithfield, Utah. The plant is a cheddar block plant running throughout the year that condenses and dries whey from the cheese manufactured in this Smithfield plant only. The DFA costs include both direct and indirect costs, and return on investment and marketing cost data.

A witness from WSDPTA testified that there is no reason to change the other solids price computation from the current formula, and that it is a necessary component of the cheese pricing formula. He noted that the use of dry whey as a commodity is correct and that the 0.968 factor in the pricing formula reflects 96.8 pounds of solids in 100 pounds of dry whey.

Most witnesses who testified about the cost of drying whey expressed the belief that drying whey costs more than drying nonfat dry milk. Two cooperative association witnesses testified that their organizations have determined that the returns from whey powder with the current make allowance would not cover the costs associated with building and operating whey powder plants.

IDFA presented the results of the survey, discussed earlier in this decision, contracted for by NCI. The IDFA witness testified that the survey showed a dry whey make allowance of at least $0.1592. The IDFA witness testified that using the nonfat dry milk make allowance significantly understates the manufacturing cost of dry whey due to the relatively higher percentage of water in liquid whey compared to skim milk, and the additional crystallization process required.

A witness representing Leprino Foods testified on the differences in the manufacturing processes for dry whey and nonfat dry milk that result in higher costs to produce whey powder. The witness concluded that the cost of making dry whey is $0.02559 above the cost of drying nonfat dry milk.

The brief submitted by Leprino argued that the additional costs of processing whey powder over those of processing nonfat dry milk should include additional staffing, cleaning, and maintenance associated with the additional equipment for whey product.

A witness from Kraft agreed that the dry whey manufacturing costs are about 2.6 cents per pound greater than the nonfat dry milk manufacturing costs. Although Kraft described its Tulare plant as large and efficient, it also represents a recent capital investment, meaning that depreciation costs are likely higher than average.

Although a number of witnesses testified that the cost of drying whey is greater than that of drying nonfat milk, the record does not provide clear support for any particular differential over the NFDM make allowance. The differential costs of manufacturing whey powder over those of nonfat dry milk do not provide close enough agreement with the NCI-sponsored survey to use either means of determining a make allowance with any confidence. Neither of the witnesses who testified that the extra costs of drying whey are 2.6 cents greater than the costs of drying nonfat dry milk testified about the total costs of the operations they were describing. Therefore, the make allowance used to calculate the other solids price should continue to be the same as that used in the total nonfat solids component price formula. The other solids price will be computed by subtracting the make allowance of $0.14 from the NASS dry whey survey price and dividing the result by .968.

The other solids price should be snubbed at zero. This means that if the NASS dry whey price minus the make allowance results in a negative number, the other solids price would become zero. A brief filed by Michigan Milk Producers Association (MMPA) supported the inclusion of such a ''snubber'' concept for the whey price. The brief cited testimony in which the DFA witness referred to the difficulty of explaining to producers a negative component price.

The value of other solids used in the Class III milk price should add to the value of milk and not be allowed to subtract from the milk value. Snubbing the other solids price to zero will prevent it from negatively affecting the value of other Class III components or having a negative impact on the producer price differential.

d. Effects of Changes to Class III and Class IV Price Formulas

The changes to the Class III and Class IV component price formulas discussed above would result not only in changes to the respective component prices, but to the resulting Class III and Class IV skim milk and hundredweight milk prices at 3.5 percent butterfat. With the exception of the 38-percent moisture adjustment to barrel cheese prices, all of the differences calculated between the current prices and the proposed prices are due to changes in the formulas' make allowances and/or the ''yield'' coefficients.

It is important to note that these calculated class price differences are based on historical product price data, and not on product prices that will occur in the future. The price differences calculated in this portion of the decision cannot be used to calculate or estimate changes in revenue that would have occurred or may occur in the future, as changing intersections of supply and demand for each product result in different prices.

All of the comparisons that follow are calculated based on the NASS weighted average commodity prices from September 1998 through June 2000. NASS weighted average commodity prices for this time period were available, and no estimates of the relevant commodity prices need to be made. Although this time period is relatively short, a number of interesting price relationships occurred in the data series. For instance during this period the cheese market went from a record high of $1.8643 per pound to $1.1011 per pound, which is just over the $1.10 per pound support price for 40-pound blocks of cheddar. During this same 22-month period the NASS weighted average nonfat dry milk price showed almost no movement, ranging from $1.0864 per pound to $1.0071 per pound, approximately two cents below the support price. In fact, the nonfat dry milk price has stayed below the support price since March 1999. Unlike the cheese and nonfat dry milk market, the butter price has not traded anywhere near the butter support price of $0.65, trading in a range from $2.6726 per pound to a low of $0.8820 per pound. It is important to keep in mind that since all milk is priced on the basis of butterfat and skim or nonfat components under Federal orders, focusing on the calculated hundredweight prices at 3.5 percent butterfat that are announced for comparison purposes can result in misleading conclusions.

Changing the Class IV butterfat price make allowance from $0.114 to $0.115 results in a calculated average decline in the Class IV butterfat price of $0.0012 over the 22-month period studied. The two changes to the Class IV nonfat solids formula, increasing the make allowance from $0.137 to $0.140 and eliminating the 1.02 divisor, would result in a net increase of $0.0144 per pound in the Class IV nonfat solids price in the absence of any other changes. Since the Class II prices are to continue to be computed on the basis of the Class IV formulas plus the Class II differential of $0.70, changes to the Class II prices will be the same as the changes to the Class IV prices. The calculated Class IV skim milk price would increase by an average of $0.13 per hundredweight. The calculated 3.5 percent Class IV milk price would increase by an average of $0.12 per hundredweight, reflecting the net difference between the $0.13 increase in the skim milk price and the very small decline in the Class IV butterfat price.

As a result of the 38-percent moisture adjustment to barrel cheese prices, the NASS weighted average cheese price used for computing the Class III protein and Class III butterfat price would be calculated to have increased by $0.014 per pound over the 22-month period September 1998 thru June 2000.

The changes to the formulas used to compute the Class III component prices would result in fairly significant changes to the component prices, as might be expected. For instance, since the current Class III butterfat price is based on the butter market and the proposed butterfat price is based on the cheese market, the proposed Class III butterfat price would average $0.4651 per pound above the current Class III butterfat price over the 22-month period if cheese and butter prices had been the same. However, the component prices are expected to track the underlying commodity prices to a much greater extent than they did previously.

The change in the protein formula over the past 22 months would result in a calculated protein price averaging approximately 53 cents below the current protein price. At the same time, the increase from $0.137 to $0.14 in the dry whey make allowance for calculating the other solids price results in a calculated decline in the other solids price of $0.003 over the 22-month period. The combination of the reductions in both the protein price and the other solids price would have resulted in an average $1.65 decrease in the Class III skim milk price over the 22-month period if cheese and dry whey prices were unchanged.

The calculation of the Class III price at 3.5 percent butterfat, based on the formulas contained in this decision, would have averaged $0.02 per hundredweight above the 3.5 percent Class III price based on the current Class III formulas.

4. Class Price Relationships

The price relationships between classes established in the Final rule under the Federal order reform process should be maintained. One proposal heard in this proceeding would have reduced the Class IV butterfat price without affecting the computation of other butterfat or product prices. That proposal is addressed specifically in the section of this decision dealing with Class IV Butterfat price.

Several witnesses testified as to what the class price relationships should be if changes were made to any of the Class III or Class IV component price formulas. The current pricing system uses the same formulas for computing the advance component prices used to compute the Class I skim milk and butterfat prices and Class II skim milk price as are used to calculate the Class III and Class IV component prices. The witness for IDFA and several other parties stated that any changes to the Class III and Class IV formulas should also apply to the advance price formulas used for computing the Class I and Class II prices. The witness explained that failure to use the same formulas between the related classes of use would result in a direct impact on the Class I and Class II differentials which was clearly not the intent of Congress when Congress instructed the Secretary to conduct a rulemaking proceeding concerning the Class III and Class IV price formulas.

A witness for Hershey Foods pointed out that the Secretary went to great lengths to justify the seventy-cent Class II differential above the Class IV price. The witness said that there is no justification or new evidence for changing the current price relationship that exists between the manufactured products (butter and nonfat dry milk) and the Class II price if the Class IV formulas were revised as suggested in several proposals. The witness stated that such changes in price relationships clearly were not the intent of Congress. A brief filed on behalf of IDFA stated

that the correct price relationship between NFDM and Class II is 70 cents, and that the record provides no basis for changing that relationship. Actually, as explained in the final decision on Federal order reform, 70 cents represents the correct price relationship between milk used to make dry milk powder and milk used in Class II, as nearly as can be determined from the information available.

A proposal by two parties that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices was supported in testimony by one of the parties, who argued that any increases in the Class I price mover should be balanced with reductions in Class I differentials. The witness stated that the proponents want to be sure that Class I prices are not further decoupled from Class III and Class IV pricing formulas, or that Class I prices are not artificially inflated.

Neither the price relationships established in the final decision between milk used in Class III or Class IV and milk used in Classes I and II should be changed. To the extent that there may be differences in the Class III or Class IV prices between the current prices and those adopted in this decision as a result of adjustments to the component pricing formulas, those changes should be reflected in the Class I and Class II prices. Any reevaluation of the formulas used to price the components used in manufactured products should be carried through to the class prices that are based on those component prices. A change in the computation of the nonfat solids price, for instance, is intended to better reflect the value of those solids in dry milk products. If the new nonfat solids price formula results in an increase in the Class IV price, the record provides no basis for changing the difference in the value of the milk used in those solids between Class IV and Class II use. Similarly, the availability of milk for use in Class I is related to the higher of the alternative manufacturing values for that milk. The current relationships should be maintained.

5. Class I Price Mover

Although not included in the hearing notice, a proposal was made by Family Dairies, USA, to change the Class I price mover from the higher of the Class III and Class IV prices to a weighted average of the two. The witness for Family Dairies testified that the results of the current regulation are disturbing and unanticipated with the unexpected strength of the Class IV price relative to Class III. He complained that 10 percent of production under Federal orders (milk used to make nonfat dry milk) has been driving the (Class I) price of 40% of the milk. As a result, he testified, milk production for fluid purposes is encouraged in markets with high Class I differentials and relatively high Class I use at a time when marketing conditions (an oversupply of milk) should have the opposite effect. As fluid-oriented markets are receiving increased prices relative to markets in which cheese is the dominant use, he complained, inequities in blend prices between markets are increasing.

A group representing upper Midwest producer interests filed a brief that described the recent movement of milk from the Upper Midwest pool onto the Central and Mideast marketwide pools as disorderly marketing caused by increases of Class I prices in these higher-Class I use markets. This shift in the pooling of milk from the upper Midwest to higher-valued markets has been a long-sought outcome on the part of upper Midwest producer groups. It is difficult to understand why it is now seen as a manifestation of disorderly marketing.

A brief filed by another group representing fluid milk handlers suggested that USDA should give careful consideration to the proposal to use a weighted average of the Class III and Class IV prices to move Class I prices. Any means of reducing Class I prices to handlers should meet with the approval of these processors, regardless of the economic merits of the proposal.

In several briefs it was argued that the Regulatory Impact Analysis (RIA) published with the final decision on Federal order reform stated that the price formulas adopted therein were expected to generate a sufficient quantity of milk, and that both the adoption of Class I pricing option IA and use of the higher of the Class III and IV prices as the price mover have worked to enhance Class I price levels. It should be noted that use of the higher of the Class III and IV prices was included in that decision and considered in the RIA, not added later by Congress, as was the change in the Class I pricing surface.

Another brief argued that since the 1960's the dairy industry has used a Class I mover tied to a market-clearing price represented by a weighted average of milk used in butter, cheese and powder. The price referred to, first the Minnesota-Wisconsin price series, and later that price adjusted by a weighted average of current product prices for the products mentioned, was specific to the upper Midwest area and included very little powder, as that area manufactures a higher percentage of cheese, relative to NFDM, than the rest of the U.S. The current pricing system is much more representative of national supply and demand for manufactured dairy products than either of the versions of the former Class I mover.

As explained in the final decision on Federal order reform, the higher of the Class III or Class IV prices are used to move the Class I price to assure that fluid plants will be better able to attract milk away from manufacturing uses. Use of the weighted average of the two prices when there is a significant difference between them would provide no assurance that milk would be available as needed for fluid uses, and would be more likely to result in Class price inversions (where the Class I price falls below one or more of the manufacturing class prices). In addition, use of a weighted average Class I price mover would increase the occurrence of the blend price falling below the Class III or IV price in markets with low Class I utilization.

Aside from the fact that the proposal to use a weighted average of the Class III and Class IV prices as the Class I mover was not noticed for consideration in this proceeding, it should be rejected on the basis of its lack of merit.

6. Miscellaneous and Conforming Changes

a. Advanced Class I Butterfat Price

Because of changes in the Class III and Class IV pricing formulas made in this decision, especially the adoption of different butterfat prices for the two classes, a conforming change should be made to the procedure for calculating the Class I butterfat and hundredweight prices. The advanced butterfat price used for pricing Class I butterfat would be the butterfat price used in calculating the higher of the advanced Class III or Class IV prices on a 3.5 percent butterfat basis.

b. Classification

As a conforming change to the development of different prices for butterfat used in Class III and Class IV products, the classification of anhydrous milkfat, butteroil, and plastic cream should be changed from Class III to Class IV. The record contains a plethora of testimony about the use of these products as substitutes for butterfat, and therefore for butter, in manufactured products. In a pricing plan where butterfat used in Class III products has the same value as butterfat used in Class IV products, a difference between the classification of these products, which have a very high

butterfat content, and butter should not cause any market dislocation. However, as extensively pointed out in testimony, continuing to classify these products as Class III when the Class III butterfat price is changed to reflect the value of butterfat in cheese, rather than its value in butter, would place the manufacturers of these products at a significant competitive disadvantage to manufacturers of butter.

c. Distribution of Butterfat Value to Producers

There were several responses to the issue of whether the butterfat price paid to producers should be the result of pooling butterfat prices from the different classes or continue to reflect the value of butterfat in Class III. A witness from Northwest Dairy Association testified that being able to line up the Class III price to plants with the component value calculation for producers is helpful, especially with regard to forward pricing. A brief filed on behalf of DFA and ADCNE supported continued use of the Class III butterfat price as the producer butterfat price. According to the brief, changes in direct pricing to the producer are not prudent at this time, and any change between the Class III and Class IV butterfat price should be settled through the producer price differential mechanism in the market order pools. The brief continued that the producer price differential is a blending of various debits and credits in the pooling process and the additional equalizing of any butterfat pricing adjustments through this procedure currently makes the most sense.

The post-hearing brief filed by National All-Jersey urged that USDA retain the current practice of using Class III milk component values to price producer component values. The brief noted that this scenario makes it easier to use accepted hedging tools, such as Class III futures contracts, and helps simplify pricing for producers. The brief further stated that the current procedure maintains the same producer butterfat price in all Federal orders with multiple component pricing.

Although hearing participants supported continuing to use the same butterfat price for Class III milk and producer payments, the butterfat values of the 4 classes should be pooled in calculating the value of butterfat received from producers. Producers should see the classified use value of the butterfat portion of their milk reflected in the value they receive for that component of their milk. Pooling the butterfat values would accomplish this principle. In addition, potential large differences between the Class III and Class IV/II butterfat prices as a result of the Class III component prices calculated from the formulas in this decision would be likely to result in significant distortions in the effect of those differences on the producer price differential. It is possible that pool calculations in some markets would result in a negative producer price differential if the producer butterfat price is not changed to represent a blend of the values of butterfat in the four classes of use.

Pooling butterfat values will also have the effect of providing more consistency among the orders. Currently, the four orders that do not have component pricing pool the class use butterfat values and return a weighted average butterfat price to producers. In the component pricing orders, butterfat values are not pooled and producers receive the Class III butterfat value. Pooling butterfat values to producers will result in producers sharing in the class use value of butterfat.

d. Inclusion of Class I Other Source Butterfat in Producer Butterfat Price Computation

In pooling the class butterfat values to determine butterfat prices to producers, the value associated with the occasional classification of other source milk as Class I should be included. This change should be made so that the value of all of the butterfat in the pool will be reflected in the producer butterfat price.

In addition, a change in the component pricing orders should be made in the paragraph in which the ''Handler's value of milk'' is calculated by replacing the differential value of other source milk allocated to Class I with the Class I value of that milk. These orders currently subtract the Class III value of such milk from its Class I value in the ''Handler's value of milk computation,'' include that differential value in the ''Computation of producer price differential,'' and credit the handler for the other source milk that was classified in Class I at the producer price differential in ''Payments to the producer-settlement fund.''

With the adoption of a producer butterfat price that can be expected to differ from the Class III butterfat price, however, it is more appropriate to include in the ''Handler's value of milk'' the entire Class I value of other source milk classified as Class I, deduct the portion of its producer value that does not include the producer price differential during the computation of the producer price differential, and credit the handler for the milk's value at producer prices in the calculation of ''Payments to the producer-settlement fund.''

7. Issue of Whether To Omit a Recommended Decision

The statute requiring that this proceeding be held to reconsider the Class III and Class IV pricing formulas also requires that a final decision be published by December 1, 2000, with any amendments to the orders to be effective January 1, 2001.

A number of hearing participants indicated understanding of the difficulty in issuing a recommended decision, allowing for comments and exceptions on the decision, and then issuing a final decision by the deadline of December 1, 2000. However, the hearing record reflects unanimity among those addressing the issue that the industry should be afforded the opportunity to comment on a decision before its content results in a final rule.

Therefore, USDA is issuing this Tentative Final Decision, which will require producer approval before the included proposed amendments become effective in an Interim Final Rule, with a subsequent Final Decision and Final Rule to follow. This procedure will allow industry comment on the content of this decision, while allowing USDA to comply with the statutorily-imposed timetable.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders;

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire tentative decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Referendum Order To Determine Producer Approval; Determination of Representative Periods; and Designation of Referendum Agents

It is hereby directed that referenda be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the orders as amended and as hereby proposed to be amended, regulating the handling of milk in the Northeast and Mideast marketing areas is approved or favored by producers, as defined under each of those orders, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be May 2000 for the Northeast order and September 2000 for the Mideast order.

The agents of the Secretary to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

Determination of Producer Approval and Representative Periods for All Other Orders

May 2000 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas are approved or favored by producers, as defined under the terms of each of those orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

September 2000 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Midwest, Central, Pacific Northwest, Southwest, Arizona-Las Vegas and Western marketing areas are approved or favored by producers, as defined under the terms of each of those orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

Dated: November 29, 2000.

Enrique E. Figueroa,

Deputy Under Secretary, Marketing and Regulatory Programs.

Interim Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674, 7253, P.L. 106–113, 115 Stat. 1501.

PART 1000–GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. Section 1000.40 is amended by removing and reserving paragraph

(c)(1)(ii) and revising paragraph (d)(1)(i) to read as follows:

§ 1000.40 Classes of Utilization.

* * * * *

(c) * * *

(1) * * *

(ii) [Reserved]

* * * * *

(d) *Class IV milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Butter, plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

2. Section 1000.50 is amended by revising the last sentence of the introductory text and paragraphs (a), (b), (c), (g), (h), (j), (l), (m), (n), (o), (p)(1), and (q)(3) and adding paragraph (q)(4) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the Class IV butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced Class III or advanced Class IV prices calculated in paragraph (q)(4) of this section.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the advanced Class III or advanced Class IV skim milk price used in the calculation of the higher of the advanced Class III or advanced Class IV prices calculated in paragraph (q)(4) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced Class III or advanced Class IV butterfat price used in the calculation of the higher of the advanced Class III or advanced Class IV prices calculated in paragraph (q)(4) of this section.

* * * * *

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the Class IV butterfat price plus $.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the Class III butterfat price.

* * * * *

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the Class IV butterfat price.

* * * * *

(l) *Class III and Class IV butterfat prices.*

(1) The Class III butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(i) Compute a weighted average of the following prices:

(A) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(B) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(ii) Subtract 16.5 cents from the price computed pursuant to paragraph (l)(1)(i) of this section and multiply the result by 1.582;

(2) *The Class IV butterfat price* per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA butter survey price reported by the Department for the month less 11.5 cents, with the result divided by 0.82.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 14 cents.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed by subtracting 16.5 cents from the price computed pursuant to paragraph (l)(1)(i) of this section and multiplying the result by 1.405;

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 14 cents, with the result divided by 0.968. The other solids price shall not be less than zero.

(p) * * *

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (l)(1)(i) of this section and round to the 5th decimal place;

* * * * *

(q) * * *

(3) Calculate the advanced Class III and advanced Class IV butterfat prices as follows:

(i) The advanced Class III butterfat price shall be calculated by subtracting 16.5 cents per pound from a weighted average of the 2 most recent U.S. average NASS survey prices for 40-lb.block cheese and for 500-pound barrel cheddar cheese (at 38 percent moisture) plus 3 cents announced before the 24th day of the month, with the result multiplied by 1.582;

(ii) The advanced Class IV butterfat price shall be calculated by subtracting 11.5 cents from a weighted average of the 2 most recent U.S. average NASS AA butter survey prices announced before the 24th day of the month, with the result divided by 0.82.

(4) Calculate the advanced Class III and advanced Class IV prices as follows:

(i) The advanced Class III price shall be the sum of the value calculated pursuant to paragraph (q)(1) of this section multiplied by .965 plus the value calculated pursuant to paragraph (q)(3)(i) of this section multiplied by 3.5, rounded to the nearest cent.

(ii) The advanced Class IV price shall be the sum of the value calculated pursuant to paragraph (q)(2) of this section multiplied by .965 plus the value calculated pursuant to paragraph (q)(3)(ii) of this section multiplied by 3.5, rounded to the nearest cent.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

1. Section 1001.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(h) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and

is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1001.61, is revised to read as follows:

§ 1001.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1001.60(h) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.*

(1) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1001.60(a) through (g) and § 1001.60(i) by the protein price, other solids price, and producer butterfat price, respectively;

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1001.60(h) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1001.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1001.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(g) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1001.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1001.61(b).

4. Section 1001.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1001.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively; and

(3) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1001.75 applicable at the location of the plant from which received.

5. Section 1001.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(vi) to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received by the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(vi) Multiply the pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

1. Section 1005.60 is amended by revising paragraph (e) to read as follows:

§ 1005.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1005.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1005.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other

source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraghs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

1. Section 1006.60 is amended by revising paragraph (e) to read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1006.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1006.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1006.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

1. Section 1007.60 is amended by revising paragraph (e) to read as follows:

§ 1007.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1007.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1007.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1007.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1030.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to

such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer butterfat price and producer price differential.

For each month the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1030.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1030.60(a) through (h) and § 1030.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1030.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1030.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1030.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1030.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1030.61(b).

4. Section 1030.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1030.75 applicable at the location of the plant from which received.

5. Section 1030.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated

under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1032.61 is revised to read as follows:

§ 1032.61 Computation of producer butterfat price and producer price differential.

For each month the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1032.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1032.60(a) through (h) and § 1032.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1032.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1032.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1032.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1032.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1032.61(b).

4. Section 1032.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1032.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1032.75 applicable at the location of the plant from which received.

5. Section 1032.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated

under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of producer butterfat price and producer price differential.

For each month the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1033.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1033.60(a) through (h) and § 1033.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1033.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1033.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1033.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1033.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1033.61(b).

4. Section 1033.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1033.71 Payments to the producer—settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1033.75 applicable at the location of the plant from which received.

5. Section 1033.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1033.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(h) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1124.61, including the section heading, is revised to read as follows:

§ 1124.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in these computations, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1124.60(h) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Producer price differential. (1) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1124.60(a) through (g) and § 1124.60(i) by the protein price, other solids price, and producer butterfat price, respectively;

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1124.60(h) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1124.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1124.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(g) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1124.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1124.61(b).

4. Section 1124.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively; and

(3) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1124.75 applicable at the location of the plant from which received.

5. Section 1124.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

1. Section 1126.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1126.61, is revised to read as follows:

§ 1126.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in these computations, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1126.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1126.60(a) through (h) and § 1126.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1126.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1126.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1126.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1126.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1126.61(b).

4. Section 1126.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1126.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1126.75 applicable at the location of the plant from which received.

5. Section 1126.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

PART 1131—MILK IN THE ARIZONA-LAS VEGAS MARKETING AREA

1. Section 1131.60 is amended by revising paragraph (e) to read as follows:

§ 1131.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1131.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1131.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1131.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

1. Section 1135.60 is amended by revising paragraphs (c)(3), (d)(2) and (h) to read as follows:

§ 1135.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(h) Multiply the Class I skim milk and Class I butterfat prices applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in these computations, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1135.60(h) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1135.60(a) through (g) and § 1135.60(i) by the protein price, other solids price, and producer butterfat price, respectively;

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1135.60(h) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1135.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1135.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(g) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1135.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1135.61(b).

* * * * *

4. Section 1135.71 is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 1135.71 Payments to the producer—settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively; and

(3) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1135.60(h) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1135.75 applicable at the location of the plant from which received.

* * * * *

5. Section 1135.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the respective butterfat prices for the month;

* * * * *

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§_____ [1] to _____, all inclusive, of the order regulating the handling of milk in the (_____ Name of order _____) marketing area (7 CFR PART _____ [2]) which is annexed hereto; and

II. The following provisions: § _____ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ [4], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

[4] Appropriate representative period for the order.

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Part VI

Department of Transportation

Federal Transit Administration

49 CFR Part 611

Major Capital Investment Projects; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR PART 611

[Docket No. FTA 99–5474]

RIN 2132–AA63

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21) requires the Federal Transit Administration (FTA) to issue regulations on the manner in which candidate projects for capital investment grants and loans for new fixed guideway systems and extensions to existing systems (''new starts'') will be evaluated and rated. This rule describes the procedures that FTA will use in the project evaluation and rating process. This rule will enable FTA and Congress to identify those new starts projects that should be considered for funding, in part, by the Federal government.

DATES: This rule will become effective on February 5, 2001, except for paragraphs (a)(1)(i)–(ii) and (d) of Appendix A to Part 611 which will become effective on September 1, 2001. Affected parties do not have to comply with the information collection requirements until FTA publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements.

FOR FURTHER INFORMATION CONTACT: For program issues, John Day, Office of Policy Development, FTA, (202) 366–4060. For legal issues, Scott A. Biehl, Assistant Chief Counsel, FTA, (202) 366–4063.

SUPPLEMENTARY INFORMATION:

Electronic Access

Electronic access to this and other documents is available through FTA's home page on the World Wide Web, at http://www.fta.dot.gov.

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, via the Docket Management System (DMS) on the DOT home page, at http://dms.dot.gov. The DMS is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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I. Background

The Federal Transit Administration (FTA) is issuing this rule to carry out the requirements of section 3009(e)(5) of TEA–21. This rule defines the process FTA will use to evaluate candidate new starts projects proposed for funding under 49 USC § 5309.

The Notice of Proposed Rulemaking (NPRM) for this Rule was issued on April 7, 1999 (64 FR 17062). The period for public comment closed on July 6, 1999, though late-filed comments were accepted through July 19. See docket #FTA–99–5474.

These procedures replace those in force since the December 19, 1996 **Federal Register** Notice (61 FR 67093), and the November 12, 1997 amendments to this Notice (62 FR 60756), which described the measures used by FTA to evaluate candidate projects for discretionary new starts funding under the statutory criteria in effect at that time.

This rule, together with the FTA/Federal Highway Administration (FHWA) planning and environmental regulations at 23 CFR parts 450 and 771, will flesh out the requirements of 49 USC 5309(e) under TEA–21. The statute now requires candidate projects to be ''(A) based on the results of an alternatives analysis and preliminary engineering, (B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies, and (C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain, and operate the system or extension.'' This rule sets forth the approach FTA will use to evaluate candidate projects in terms of their justification and local financial commitment. Consistent with 49 USC 5309(e)(6), as amended by section 3009(e) of TEA–21, these procedures will be used to approve candidate projects for entry into preliminary engineering and final design. These procedures will also be used to evaluate projects in order to make recommendations for funding in the annual report to Congress required by 49 USC 5309(o)(1).

This rule describes the project evaluation and rating process; it does not define the process by which FTA determines annual project funding recommendations, nor does it define the process by which FTA enters into funding commitments through Full Funding Grant Agreements (FFGAs). These processes are beyond the scope of this rule. The ratings developed under this rule are intended to denote overall project merit, and will form the basis for such funding decisions; however, actual funding decisions will also involve consideration of the amounts of new starts funding available under section 5309 (both annually and over the authorization period), proposed projects' phase of project development, geographical factors, and any outstanding issues that may affect the viability of a proposed project. For purposes of annual budget recommendations to Congress, proposed new starts projects must also be likely to have completed enough of final design that cost estimates are firm and be likely to have in place a fully committed financial plan by the close of the fiscal year for which recommendations for new Full Funding Grant Agreements (FFGAs) are being made.

II. History

Since the early 1970's, the Federal government has provided a large share of the Nation's capital investment in urban mass transportation, particularly for ''new starts'' (major new fixed guideway transit systems or extensions to existing fixed guideway systems). By the mid-1970's, because of the magnitude of the new start commitments being proposed, the

Department found it useful to publish a statement of Federal policy to ensure that the available resources would be used in the most prudent and effective manner.

A. The First Policy Statement (1976)

The first policy statement was issued in 1976 (41 FR 41512 (September 22, 1976)). It introduced a process-oriented approach with the requirement that new start projects be subjected to an analysis of alternatives, including a Transportation System Management (TSM) alternative that used no-capital and low-capital measures to make the best use of the existing transportation system. The Statement also required projects to be ''cost-effective.''

B. Policy on Rail Transit (1978)

The original policy was supplemented in 1978 by a ''Policy on Rail Transit'' (43 FR 9428 (March 7, 1998)). This Statement reiterated the requirement for alternatives analysis, established requirements for local financial commitments to the project, established the concept of a contract providing for a multi-year commitment of Federal funds, with a maximum limit of Federal participation (the Full Funding Grant Agreement—FFGA), and required that local governments undertake supporting local land use actions. This was supplemented by a 1980 policy statement that linked the alternatives analysis requirement to the Environmental Impact Statement development process (45 FR 71986 (October 30, 1980.))

C. Statement of Policy on Major Urban Mass Transportation Capital Investments (1984)

These principles were reiterated and refined in a May 18, 1984, Statement of Policy on Major Urban Mass Transportation Capital Investments (49 FR 21284). The major feature of this policy statement was the introduction of an approach for making comparisons between competing projects. To do so, a rating system was established under which projects were evaluated in terms of a cost effectiveness index of forecast incremental cost per incremental rider for the build alternative, compared with the TSM alternative as the base. Further, index threshold values were established which projects had to pass in order to be considered for funding. In addition, the criteria to be used to judge local financial commitment were spelled out.

D. Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)

The principles of the 1984 policy statement were later incorporated into law with enactment by Congress of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100–17). This act established in law a set of criteria which new starts projects had to meet in order to be eligible for Federal discretionary grants. Specifically, projects had to be ''cost-effective'' and ''supported by an adequate degree of local financial commitment.'' STURAA also added a requirement for an annual report to Congress laying out the Department's recommendations for discretionary funding for new starts for the subsequent fiscal year.

To effectuate the requirements set forth in STURAA, on April 25, 1989 FTA (then the Urban Mass Transportation Administration) issued a Notice of Proposed Rulemaking (54 FR 17878). This Proposed Rule would have codified the requirements of the 1984 Policy Statement and made the ''Cost Per New Rider'' Index and threshold values regulatory. However, in the FY 1990 and FY 1991 Appropriations Acts, Congress directed that this rulemaking not be advanced (See the Department of Transportation and Related Agencies Appropriations Act, 1990 (Pub. L. 101–164) and Department of Transportation and Related Agencies Appropriations Act, 1991 (Pub. L. 101–516)). Consequently, on February 3, 1993, this proposed rulemaking was withdrawn (58 FR 6948).

E. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made substantial changes to the legislative basis for the criteria used to evaluate candidate projects. Specifically, the original requirement that a project be ''cost-effective'' was expanded; the new requirement specified that projects be ''justified, based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, and operating efficiencies.'' In addition, certain ''considerations'' and ''guidelines'' were established that were to be taken into account in determining how well a project met the criteria.

F. Executive Order 12893 (1994)

On January 26, 1994, the President issued Executive Order 12893 (59 FR 4233), describing the principles which Federal agencies are to apply in determining how to invest in all forms of infrastructure, including transportation. The Executive Order requires a systematic analysis of the costs and benefits of proposed investments, and sets out the parameters for such analysis. It calls for efficient management of infrastructure, including a focus on the operation and maintenance of facilities, as well as the use of pricing to manage demand, and calls for comparison of a comprehensive set of options and consideration of quantifiable and qualitative measures of benefits for all programs.

G. Policy Discussion Paper (1994)

Thereafter, in September 1994, FTA circulated a ''policy discussion paper'' to the transit industry and other stakeholders for comment. This paper detailed various approaches for evaluating proposed projects under the ISTEA criteria, and requested comment on nine specific issues. Interest was extensive, and a period of public comment, further analysis, additional industry input, and additional analysis ensued.

H. The 1996 Statement of Policy

On December 19, 1996, FTA issued a Notice in the **Federal Register** that formally adopted the ISTEA project justification criteria (61 FR 67093). This Notice defined the criteria, established the process, and described the measures that would be used to evaluate candidate projects for discretionary new starts funding. This Notice also established a multiple-measure method of project evaluation, in a manner consistent with Executive Order 12893.

This Statement of Policy was amended on November 12, 1997, to incorporate Departmental guidance establishing a Department-wide standard for valuing travel time, and made other technical corrections (62 FR 60756).

III. Transportation Equity Act for the 21st Century (TEA–21)

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) was enacted. TEA–21 leaves much of past law and policy regarding new starts intact, including the basic project justification criteria and the multiple-measure method of project evaluation. However, a number of significant changes were introduced.

A. Significant Changes

• Integration of the Major Investment Study (MIS) requirement into the FTA/FHWA planning and environmental regulations (23 CFR part 450 and 23

CFR part 771), elimination of the MIS as a separate requirement (see section 1308 of TEA–21), and required streamlining of the environmental process (see section 1309 of TEA–21);

- The requirement for FTA to establish overall project ratings of ''highly recommended,'' ''recommended,'' or ''not recommended;''
- The requirement for FTA approval for a project to advance to the final design stage of the project development process; and
- The requirement that FTA publish regulations on the manner in which proposed projects will be evaluated and rated (the purpose of this rule).

B. Other Changes

- Several additional statutory ''considerations'' have been added to the project evaluation process, including the cost of sprawl, infrastructure cost savings due to compact land use, population density and current transit ridership in a corridor, and the technical capacity of the grantee to undertake the project.
- TEA–21 expressly prohibits FTA from considering the dollar value of mobility improvements (see section 3010).
- The ISTEA exemptions from the FTA statutory project evaluation process, for proposed projects that require less than one-third of the project funding from 49 U.S.C. 5309 or are part of a State Improvement Plan for air quality, were eliminated. The exemption remains for projects requiring less than $25 million in 49 U.S.C. 5309 funding.
- For evaluating local financial commitment, the consideration for local funding beyond the required non-Federal share has been incorporated into statute.
- A second annual report to Congress, in addition to the existing *Report on Funding Levels and Allocations of Funds*, is now required. This new ''Supplemental New Starts Report,'' due each August, will include updated ratings for projects that have completed the alternatives analysis and preliminary engineering stages of development since the date of the last *Report on Funding Levels and Allocations of Funds*.

IV. Government Performance and Results Act of 1993

The Government Performance and Results Act (GPRA) was enacted in 1993 to provide for the establishment of strategic planning and performance measurement in the Federal Government. It is primarily intended to improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.

In the NPRM for this rule, FTA indicated an intent to develop performance measures to evaluate our administration of the new starts program, and to measure the performance of Federal new starts investments. Both of these measures would be incorporated into FTA's management of new starts projects. The NPRM invited specific comment on these issues, including recommendations as to which measures and indicators would be appropriate, as well as appropriate timeframes for evaluation.

Comment. FTA received a total of three comments on the GPRA issues, from two interest groups and one transit industry trade association. On the subject of FTA's performance in administering the new starts program, two of the commenters recommended that performance be measured according to factors under FTA's control, such as timeliness in responding to grantee inquiries, reporting to Congress, uniformity of guidance, approval actions, and the extent to which funding recommendations are based on project ratings. One commenter saw no benefit to evaluating FTA's performance in this regard.

Only two of the three commenters addressed the subject of new starts follow-up evaluations, the industry trade association and one of the two interest groups. Both supported the general concept of follow-up evaluations, but provided little additional comment. The interest group recommended that reviews not occur until at least after the first year of revenue service, and not later than 15 years, suggesting ratings at 2 and 7 years. The trade association recommended that projects be evaluated against objectives set at time of the decision to implement the project; ratings should encompass a 5–10 year operating period, and should focus on overall performance, not ridership and cost.

Response. The wording of the section on GPRA in the preamble to the NPRM may have led to confusion regarding what FTA intends to measure, which may account for the fact that few comments were submitted on this issue. In evaluating FTA's administration of the new starts program, the intent was to establish measures for determining the degree to which projects remain on schedule and on budget once a commitment to fund the project has been made (*i.e.*, an FFGA has been executed), and to measure the success of new starts projects once they are in operation. This rule incorporates a two-step data collection process to meet both of these goals. For those new starts that are put under FFGAs, FTA will combine before-and-after data with planning projections to evaluate the project in terms of four areas of interest: Capital costs, operating costs, system utilization (including ridership levels, service levels, user characteristics, trip purposes, demographics, etc.), and external factors relevant to the project. These data collection activities will be considered an eligible part of the project for funding purposes. Prior to the execution of an FFGA, project sponsors, as part of their final design efforts, will have to submit a complete plan for collection of the ''before'' data to FTA. The actual collection of data by project sponsors will be required before construction begins. The FFGA will contain a requirement for the project sponsors to collect the ''after'' data, two years after the project opens for revenue service. FTA will then compare the ''after'' data with the ''before'' data, as well as with the projections of costs, ridership, and system utilization characteristics made during the project development process, to evaluate the success of the project. Project sponsors will also be asked to report on any external factors that might have influenced the costs, ridership, and utilization factors, such as unexpected increases or decreases in gasoline prices, employment trends, etc.

The intent of this evaluation process is to help to develop a greater understanding of the actual benefits of new starts, and support improvements to the forecasting process. FTA recognizes that this evaluation will provide only a short-term ''snapshot'' of the performance of a new fixed-guideway system, and that many of the benefits, particularly in terms of land use, are long-term in nature. Project sponsors are of course encouraged to continue their data collection efforts beyond the period two years after opening. However, given the nature of the appropriations and authorization process, there is also a need for short-term data to provide an initial indication of the benefits of a project.

V. Outreach

The development of this Rule began with a series of outreach sessions conducted during the months of September and October 1998. Three workshops were held around the country: One in Portland, Oregon, in conjunction with the RailVolution Conference on September 14, 1998; one

in Washington, DC on September 25, 1998; and one in New York City, in conjunction with the Annual Meeting of the American Public Transit Association (APTA) on October 8, 1998.

The purpose of these outreach sessions was to describe the changes made by TEA–21 to the new starts program, discuss how we plan to implement them, and solicit general comment on FTA's policies and procedures in managing the new starts program.

The comments received during this outreach process were generally supportive of our proposed approach to this rule, including the retention of the basic principles of the 1996 Statement of Policy.

The NRPM for this rule was issued on April 7, 1999. The docket was open for public comment through July 6, 1999, though late-filed comments were accepted through July 19, 1999. Comments were received from a total of 41 individuals and organizations. During the comment period, FTA held three additional public outreach workshops to solicit comment on the proposed rule; one in Toronto, Ontario on May 24, 1999, in conjunction with the 1999 American Public Transit Association's Commuter Rail/Rapid Transit Conference; one in Oakland, California on June 3, 1999; and one in Washington, DC on June 8, 1999. Notes from these workshops have been placed in the docket for this rule (#FTA–99–5474–48).

VI. Section-by-Section Analysis

A. Section 611.1: Purpose and Contents

This section states that this rule is issued to meet the statutory requirement of Title 49, United States Code, section 5309(e)(5).

This rule establishes the methodology by which FTA will evaluate proposed new starts projects as required by 49 U.S.C. 5309(e). The data collected as part of the planning and project development processes and related regulations, conducted under 23 CFR part 450 and 23 CFR part 771, will provide the basis for this evaluation. Applicants must follow these rules to be considered eligible for capital investment grants and loans for new fixed guideway systems or extensions (''new starts'').

The results of this evaluation will be used by FTA to make the findings required by statute for proposed projects to advance into the preliminary engineering and final design stages of project development, and to develop funding recommendations for the President's annual budget request. They will also be used to determine which projects are eligible for funding commitments under Full Funding Grant Agreements.

The information collected and ratings developed under this rule will form the basis for the annual Report on Funding Levels and Allocations of Funds, as required under 49 U.S.C. 5309(o)(1), and the ''Supplemental Report on New Starts,'' as required by 49 U.S.C. 5309(o)(2). The NPRM to this Rule proposed cutoff dates for information to be included in these reports; however, FTA has reconsidered the need for dates, as we strive for more real-time information. Thus, the cutoff dates for these reports have been dropped from this rule.

B. Section 611.3: Applicability

This section states that this rule applies only to the evaluation of projects seeking Federal capital investment funds for new transit fixed guideway and extension projects (''new starts'') under 49 U.S.C. 5309.

It also states that proposed projects are exempt from evaluation under this rule if the total amount of funding under 49 U.S.C. 5309 is less than $25,000,000, or if they are specifically exempt by statute. Such projects must still meet the planning requirements under 23 CFR part 450 and environmental review requirements under 23 CFR part 771, as well as the project development process described in this rule.

Title 49, U.S.C. 5309(e)(7) requires new starts projects to be carried out through a Full Funding Grant Agreement (FFGA), and also requires FTA to base the decision to issue an FFGA on the results of the evaluations and ratings process. Thus, any proposed project that is not evaluated will not be eligible for an FFGA. Sponsors of proposed projects that they believe to be exempt are therefore strongly urged to submit project evaluation information to FTA. FTA will carefully review projects for which sponsors are claiming exemptions under this rule. Such projects will still be approved for entry into preliminary engineering and final design, based on planning and project development requirements. If the proposed share of project funding from the section 5309 new starts program passes the $25 million level at any time, FTA will expect the project sponsor to develop the information required to be evaluated under this rule, and will require that such a project be funded using an FFGA.

This section also notes that projects for which an FFGA has already been executed are not subject to reevaluation under this rule. However, extensions and/or modifications to projects with existing FFGAs will be subject to evaluation and rating under this rule.

Comment. FTA received six comments on the issue of project exemptions, expressing general confusion and opposition to FTA's position on exempt projects. One transportation consultant and one transit operator argued that all exempt projects should be assigned a default rating of ''medium,'' which could be raised by the submission of data for evaluation; the transit operator also expressed the opinion that small projects (*i.e.*, <$25 million in new starts funds) do not generate great benefits, and therefore should not be required to submit data for evaluation. One State DOT recommended that FTA simply set aside $500 million annually for exempt projects.

Three commenters also expressed some degree of confusion regarding the treatment of exempt projects. One attendee at the Washington, DC workshop wondered whether project sponsors would attempt to ''cheat'' the process by claiming exemptions and another at the Oakland, CA workshop expressed confusion about continued eligibility of exempt projects for funding. One industry interest group commented that, since TEA–21 already contains language exempting projects under existing FFGAs from re-evaluation under the revised criteria, including the same language in the Final Rule would be confusing.

Response. FTA is not prepared to set aside half (or any amount) of the annual new starts funding authorization for exempt projects, and rejects the assertion that Congress intended such projects to be exempt from the evaluation process because they have no measurable benefits. The Final Rule retains the NPRM language strongly encouraging sponsors of projects they believe to be exempt to submit data for project evaluation. This encouragement does not and is not intended to eliminate the provisions in TEA–21 exempting certain projects from the evaluation process, as many of the commenters seem to have surmised. Any proposed project that meets these provisions is still exempt from the evaluation and rating process; however, submitting data will give FTA an empirical basis on which to make funding recommendations to Congress. It will also maintain a proposed project's eligibility for an FFGA. Indeed, 49 U.S.C. 5309(e)(7) requires new starts projects to be carried out through a Full Funding Grant Agreement, and also requires FTA to base the decision to execute an FFGA on the results of the

evaluations and ratings process. Thus, any proposed project that is not evaluated will not be eligible for an FFGA. FTA will of course allocate any funds appropriated by Congress for such projects. However, we believe project sponsors will find the more predictable and reliable funding provided through an FFGA to be to their advantage. Therefore, project sponsors are encouraged to submit data for evaluation to retain their eligibility for an FFGA.

Finally, FTA acknowledges that there may be a temptation to circumvent the project evaluation process, as noted during the Washington, D.C. workshop. For example, it is conceivable that project sponsors may officially maintain a low level of section 5309 new starts funds throughout a project's development, only to ''discover'' that additional funds will be needed as the development process draws to a close. FTA also recognizes that not all such instances will result from deliberate attempts to manipulate the process; occasionally, further engineering and design will uncover a legitimate need for additional funds during the project development process, or local funding may not materialize as initially proposed. However, due to the fact that project evaluation is a condition of eligibility for an FFGA, and that an FFGA offers more stability in terms of funding than relying on annual Congressional appropriations, FTA believes that deliberate attempts to evade project evaluation will be few and far between.

Although projects proposed as ''exempt'' are not subject to evaluation against the new starts project justification and local financial commitment criteria, such projects must still request FTA approval for entrance into preliminary engineering and final design. The decision to approve advancement in the project development process for such projects is based on compliance with basic planning, environmental, project management, and other requirements which apply to all projects pursuing section 5309 new starts funding, regardless of the amount. It is at the preliminary engineering and final design approval points that FTA works with the project sponsor to determine if the proposed ''exempt'' project appears to be at risk for requiring new starts funding at an amount greater that $25 million, and to seek assurances that local or other Federal formula funds will be pursued if a project's cost or funding strategy changes. Once again, in order to preserve maximum funding flexibility, FTA strongly encourages the sponsors of proposed projects that they believe to be exempt to nonetheless submit data for evaluation.

C. Section 611.5: Definitions

This section defines key terms used in this part.

Comment. Four commenters to the proposed rule expressed concern that the definition of ''fixed guideway'' was unnecessarily narrow, and may perhaps exclude many bus rapid transit (BRT), ferry boat, commuter rail and light rail systems that would operate along a shared right-of-way.

Response. FTA has re-examined the definition used in the NPRM, and agrees that it could be read as excluding some BRT and ferry projects that would otherwise be eligible under the new starts program. The definition used in this rule has been modified to address this uncertainty. Definitions for ''bus rapid transit'' and ''BRT'' have also been added, consistent with the definition used in FTA's Request for Participation in the Bus Rapid Transit Demonstration Program (63 FR 68347 (December 10, 1998)).

FTA has also added a definition for ''Transportation System User Benefits'' and removed the definition for the ''Transportation System Management alternative,'' as discussed later in the preamble to this Rule.

D. Section 611.7: Relation to Planning and Project Development Processes

New start projects, like all transportation investments in metropolitan areas, must emerge from a regional multimodal transportation planning process in order to be eligible for Federal funding. In addition, 49 U.S.C. 5309(e)(1) specifies that discretionary grants or loans for new starts may only be approved if a proposed project is based on the results of alternatives analysis and preliminary engineering, and that certain project justification and financial criteria have been met.

As part of the metropolitan planning process, local project sponsors must perform a corridor-level analysis of mode and alignment alternatives in corridors for which projects may be proposed for section 5309 new starts funding. This alternatives analysis will provide information on the benefits, costs, and impacts of alternative strategies, leading to the selection of a locally-preferred alternative to the community's mobility needs.

The approach taken in this rule envisions alternatives analysis as a key planning tool to be undertaken within the multimodal metropolitan and statewide planning processes, supplemented by subsequent project development analyses, for determining appropriate solutions to transportation issues. FTA and FHWA are currently modifying their joint planning and environmental regulations to better reflect the planning and project development provisions of TEA–21. To the extent possible, the development of these regulations has been coordinated with the development of this final rule on major transit capital investments. However, FTA may amend this rule, if necessary, when the joint planning and environmental Final Rule is issued.

Federal financial support for the planning process is derived from a number of sources, including the Metropolitan Planning Program under 49 U.S.C. 5303, the State National Planning and Research Program under 49 U.S.C. 5313, and planning programs administered by the Federal Highway Administration. FTA Urbanized Area Formula funds under 49 U.S.C. 5307 and flexible funds under the Surface Transportation Program (STP) and the Congestion Mitigation and Air Quality (CMAQ) Program may also be used to support certain planning activities. Given the significant demands placed on the new start program, FTA does not support the use of 49 U.S.C. 5309 funds for initial planning activities. Moreover, as amended by TEA–21, 49 U.S.C. 5309(m)(2) limits the amount of new starts funding that can be used for purposes other than final design and construction to not more than 8 percent of funds appropriated. In evaluating the local financial commitment to a proposed project, FTA will consider the degree to which initial planning activities are conducted without funding from section 5309.

The alternatives analysis study (also known as a major investment study—MIS—or multimodal corridor analysis) evaluates several modal and alignment options for addressing mobility needs in a given corridor. It is intended to provide information to local officials on the benefits, costs, and impacts of alternative transportation investments. Potential local funding sources for implementing and operating the investment are to be identified and studied, and information in response to the FTA new starts project evaluation criteria is to be developed. Involvement of a wide range of stakeholders—including the general public—in the alternatives analysis study process is strongly encouraged. At local discretion, the alternatives analysis may include the undertaking of a Draft Environmental Impact Statement (DEIS) or Environmental Assessment (EA). Alternatives analysis is considered

complete when a locally preferred alternative (LPA) is selected by local and regional decisionmakers and adopted by the metropolitan planning organization (MPO) in its financially-constrained metropolitan transportation plan.

At this point, the local project sponsor may submit a request to the FTA regional office to initiate the preliminary engineering phase of project development. The request must provide information that demonstrates the readiness of the project to advance into preliminary engineering, including the adoption of the project into the metropolitan transportation plan and the programming of the preliminary engineering study in the Transportation Improvement Plan (TIP), and information demonstrating the technical capability of project sponsors to undertake the preliminary engineering effort. The request must also address the project justification and local financial commitment criteria outlined below. (This information is normally developed as part of an alternatives analysis.) FTA will then evaluate the proposed project as required by 49 U.S.C. 5309(e)(6) and determine whether or not to advance the project into preliminary engineering. FTA approval to initiate preliminary engineering is not a commitment to fund final design or construction.

Where the sponsoring agency believes that a proposed project is exempt from evaluation under this rule, submission of project justification and financial commitment information to FTA is not required. However, exempt projects must still meet all planning, environmental, project management, and other requirements which demonstrate their readiness to advance into preliminary engineering. In addition, without information to support the justification of and local financial commitment to a proposed project, FTA will have no basis for decisions on whether to recommend Federal funding commitments. Therefore, sponsors of exempt projects are strongly encouraged to submit information on project justification and financial commitment.

During the preliminary engineering phase, local project sponsors refine the design of the proposal, taking into consideration all reasonable design alternatives. Preliminary engineering results in estimates of project costs, benefits and impacts in which there is a much higher degree of confidence. A comprehensive preliminary engineering effort will also address the evaluation criteria described in this rule. In addition, NEPA requirements must be met (for new starts, this usually includes the completion of a Final Environmental Impact Statement), project management plans and fleet management plans are finalized, and local funding sources are committed to the project (if they have not already been committed). Information on project justification and the degree of local financial commitment will be updated and reported as appropriate. As part of their preliminary engineering activities, localities are encouraged to consider policies and actions designed to enhance the benefits of the project and its financial feasibility.

Project sponsors should also ensure that safety considerations are weighed during the preliminary engineering phase. With regard to rail projects that will be subject to Federal Railroad (FRA) safety jurisdiction, FTA will notify FRA of pending new starts at the earliest date practicable, as important decisions affecting rail safety must be made at the outset of the planning and grant development process. FRA will forward any recommendations it has to FTA, which will forward them to the project sponsor.

Preliminary engineering is typically financed with 49 U.S.C. § 5303 and § 5307 funds, local revenues, and flexible funds under the STP and CMAQ programs.

Preliminary engineering is considered complete when FTA has issued a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), as required by NEPA.

Proposed projects that have completed preliminary engineering must request FTA approval to enter the final design phase of development. The request must provide information that demonstrates to FTA the technical capability and financial capacity of the local project sponsor to advance the project into final design. Like the approval to enter into preliminary engineering, this approval is based upon a review and evaluation of the costs, benefits, and impacts under the statutory project evaluation criteria. Final design is the last phase of project development, and includes right-of-way acquisition, utility relocation, and the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents. Final design is typically eligible for 49 U.S.C. 5309 new start funds.

Comment. In the NPRM to this rule, FTA asked for public comment on the relationship between the alternatives analysis requirement and the planning and project development processes. A total of nine comments addressed this issue. Two respondents, a transit industry trade association and a large transit operator, objected to the fact that an alternatives analysis is required for transit new starts, but not for highway projects. Another transit operator objected to alternatives analysis as ''outside'' of the ''normal'' corridor study process, topheavy and burdensome, and inconsistent with planning regulations.

Response. It is in fact true that Federal highway programs do not require an analysis of alternatives in the same manner as the new starts program. However, this is a fact of law, not Departmental policy. The new starts program is a discretionary funding program; alternatives analyses are required to develop information for decisionmaking purposes. Conversely, the Federal highway program is a formula program; no Federal decisionmaking is required. Neither FTA nor DOT are at liberty to remove the requirement for alternatives analysis from the new starts program, or to impose a similar requirement on the Federal highway program. To do so would require a change in the law by Congress. As for the perceived inconsistency with planning regulations, the joint FTA/FHWA planning regulations are designed to be consistent for both agencies' major capital investment programs; they neither require FHWA-funded projects to undergo alternatives analysis, nor prevent FTA-funded new starts from meeting the statutory requirement that an alternatives analysis be conducted.

Comment. One transit operator commented that the issuance of this rule should be delayed until the revisions required by TEA–21 to the FTA/FHWA planning and project development regulations have been issued.

Response. This rule applies only to FTA's own evaluations of proposed new starts, which does not feed into the planning process; rather, FTA's new starts evaluations rely upon the data and information derived from the planning process. Therefore, FTA is not persuaded that formal implementation of the TEA–21 new starts provisions should be delayed further. Should the final planning rule require changes to the new starts project development process, however, this rule will be amended accordingly.

Comment. Two commenters expressed confusion regarding the ''demise'' of the Major Investment Study (MIS), and requested clarification.

Response. Section 1308 of TEA–21 eliminated the separate requirement for an MIS and integrated its basic concepts into the joint planning and

environmental regulations issued by FTA and FHWA (23 CFR parts 450 and 771). Existing MIS activities will still satisfy the requirement for an alternatives analysis, and project sponsors who wish to follow the principles of the multimodal MIS to conduct new alternatives analyses are encouraged to do so. The joint planning and environmental regulations will more fully describe how the MIS concepts will be integrated into the process.

Comment. The NPRM noted that FTA does not support the use of section 5309 new starts funds for initial planning activities, given the demands placed on the program and the availability of funds from other FTA programs for this purpose, and stated that FTA would consider this when evaluating local financial commitment. Six comments were received on this issue. Four commenters objected to what they viewed as ''penalizing'' project sponsors for using new starts funds for planning activities relating to proposed new starts projects; one commenter asked for clarification as to whether such projects would be penalized; and one (a transit operator) supported limiting the use of new starts funds for planning. One transit operator, citing the statutory 8 percent limit on program funding for activities other than final design and construction, noted that Congress ''clearly intended'' for section 5309 funds to be used for alternatives analysis and preliminary engineering. A local government entity claimed that there was no ''statutory basis'' for including the use of section 5309 funds for planning purposes as part of the project evaluation process, and noted that it would be inappropriate to ''penalize'' projects that Congress saw fit to earmark. This same commenter suggested measuring such uses of funds against the 8% limit established in TEA–21.

Response. The Final Rule retains the principle that FTA will consider the degree to which initial planning activities are conducted without funding from section 5309 as part of our evaluation of the local financial commitment. This is not intended as a ''penalty'' for project sponsors who seek and secure Congressional earmarks for these activities. Rather, it is intended to give a degree of recognition to the efforts of sponsors who make use of existing sources of Federal, State, and local planning funds, such as those noted above. Further, making such considerations is consistent with Congressional direction. The conference report to the FY 1999 appropriations act instructed FTA to consider the extent to which new starts project sponsors make use of the appreciable increases in formula funding for alternatives analysis and preliminary engineering, when evaluating the local financial commitment of proposed new starts.

Comment. Twelve comments addressed the issue of the statutory requirement for FTA approval to advance into preliminary engineering and final design. Most expressed some degree of discomfort with the notion of such approvals, and noted a need for more guidance and better definitions of the stages of project development and the development process itself. The strongest objection was expressed by a transit operator who asserted the project development process is separate and distinct from the evaluation process, and that proposed new starts projects should therefore simply be permitted to proceed without FTA approval.

Response. In most cases, the ''newness'' of this approval requirement seems to be responsible for much of the confusion. The requirement for FTA approval to enter final design was added to the new starts program by TEA–21; this rule simply implements that requirement. FTA is not at liberty to change the law through this or any other rulemaking process. FTA approval has long been required to enter into preliminary engineering, though the role of the project ratings process was not as large.

Comment. Four of those commenting on the approval requirement, including a transit industry trade association, requested clarification of what is required to fulfill the requirements for completion of the various stages of development.

Response. The language concerning alternatives analysis, preliminary engineering, and final design has been revised in both the text of this rule and the preamble to better describe these activities. In addition, FTA issued guidance in September 1999 which clarifies the project development and approval process.

Comment. The industry trade association also suggested that local financial commitment not be considered for approval to enter the next stage, a comment echoed by a transit operator. Another transit operator and the trade association suggested that different requirements be established for approval to enter preliminary engineering than for final design. The apparent fear is that worthy projects may be denied approval to enter preliminary engineering simply because adequate information on costs and benefits is not available with a high level of certainty so early in the development process.

Response. Section 5309(e)(6) clearly states that FTA may only approve the advancement of a proposed project to the next stage of development if it meets the statutory project evaluation criteria, and is likely to continue to do so. However, FTA recognizes that the level of information available and the degree of certainty varies according to the stage of project development; the earlier in the process a proposed project is, the less certain the forecasts and estimates. For this reason, FTA sets different standards for high, medium, and low ratings for preliminary engineering than for final design; the further a proposed project is in the process, the higher the standard. In the case of local financial commitment, for example, it may be sufficient to simply demonstrate a reasonable financial plan that identifies proposed sources of local funds needed to construct the project (*i.e.*, to show that the sponsors have considered how they intend to pay for it) when seeking approval to enter preliminary engineering. It is not reasonable to expect ballot measures to have passed and funds to have been programmed at this stage. However, by the time a proposed project is ready to enter final design, most or all of the local funds should be committed, including provisions for cost overruns. It has been a longstanding FTA practice in the management of the new starts program and the project evaluation process to make such distinctions among the stages of project development; this practice has been discussed in the Annual Report on New Starts and its predecessor, the annual Report on Funding Levels and Allocations of Funds, since the May 1991 edition. Further, FTA cannot assign project ratings during alternatives analysis, as there is essentially no project to evaluate until the locally-preferred alternative is selected. Project sponsors need not worry that they will ''fail'' the evaluation process simply because their proposed project is still in the early development stages.

Comment. The trade association and three other commenters also requested language clarifying that projects already in preliminary engineering at the time the final rule is issued have met the requirement for alternatives analysis, as have prior Major Investment Studies (MISs).

Response. This rule in no way revokes prior FTA approvals for preliminary engineering (or final design). Language to this effect has been added to § 611.7, Relation to planning and project development processes.

Comment. One commenter requested a regulation to define ''major investment studies.''

Response. The discussion of alternatives analysis earlier in the preamble to this rule has been revised to better address this issue. The pending joint FTA/FHWA planning and environmental regulations will more fully describe the integration of the MIS into the planning and environmental process under TEA–21.

E. Section 611.9: Project Justification Criteria

Section 5309(e)(1)(B) requires the Secretary to determine that a proposed new starts project is justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies. To make this determination, FTA will evaluate information developed through the planning and project development processes. The method used to make these determinations is a multiple measure approach in which the merits of candidate projects will be evaluated against a set of measures. The ratings for each measure will be updated annually for purposes of the annual report on funding levels and allocations of funds required by section 5309(o)(1), the supplemental report required by section 5309(o)(2), and as required for FTA approvals to enter into preliminary engineering, final design, or FFGAs. As a candidate project proceeds through the stages of the project development process, a greater degree of certainty is expected with respect to these measures. Measures have been established for each of the following criteria:

1. Mobility improvements;
2. Environmental benefits;
3. Operating efficiencies;
4. Transportation System User Benefits (Cost Effectiveness);
5. Existing land use, transit supportive land use policies, and future patterns; and
6. Other factors, including:

(a) The degree to which the policies and programs (*e.g.*, parking policies, etc.) are in place as assumed in the forecasts;

(b) Project management capability; and

(c) Additional factors relevant to local and national priorities and relevant to the success of the project.

For each proposed project, FTA will assign one of five descriptive ratings (''high,'' ''medium-high,'' ''medium,'' ''low-medium,'' or ''low'') for each of the first five criteria; information on ''other factors'' will be reported as appropriate.

The measures for the project evaluation criteria are described in Appendix A to this rule. FTA may amend or modify these measures in response to the results of ongoing research into methods for evaluating the benefits of transit investments.

Comment. In the NPRM for this Rule, FTA proposed that in all cases, the proposed new start would be evaluated against both a no-build and Transportation System Management (TSM) alternative. The retention of the TSM was the subject of substantial comment in response to the NPRM. A total of 13 comments were submitted on this issue, all of them opposed. Most of the commenters felt that it was unnecessarily burdensome to maintain a TSM alternative for what they viewed as solely FTA's purposes, noting that certain incremental system improvements will occur whether the new start is constructed or not; *i.e.*, it is no longer appropriate to view the no-build alternative as a ''do nothing'' scenario. The most common suggestion was that, if the TSM requirement is retained, it should be dropped after alternatives analysis has resulted in the selection of a locally-preferred alternative.

Response. FTA accepts the argument that it is no longer appropriate to assume that a no-build alternative presents a ''do nothing'' scenario. The realities of modern urban and suburban planning, transportation, and economic development make it virtually impossible to assume that no improvements will occur if a proposed new start is not implemented. At the same time, however, a consistent baseline is needed to ensure a fair evaluation of proposed new starts projects nationwide. The TSM alternative has served well in this regard.

In response to comments submitted on this issue and in recognition of the desire to simplify the new starts process, this Rule eliminates the requirement for separate no-build and TSM alternatives, and instead requires that the proposed new start be evaluated against a single ''baseline alternative.'' The baseline alternative is best described as transit improvements lower in cost than the proposed new start, which result in a better ratio of measures of transit mobility compared to cost than the no build alternative; the ''best you can do'' without the new start investment. The purpose of the baseline comparison is to isolate the costs and benefits of the proposed major transit investment. At a minimum, the baseline alternative must include in the project corridor all reasonable cost-effective transit improvements short of investment in the new start project.

Depending on the circumstances and through prior agreement with FTA, the baseline alternative can be defined appropriately in one of three ways. First, where the adopted financially constrained regional transportation plan includes within the corridor all reasonable cost-effective transit improvements short of the new start project, a the no-build alternative that includes those improvements may serve as the baseline. Second, where additional cost-effective transit improvements can be made beyond those provided by the adopted plan, the baseline will incorporate those cost-effective transit improvements as well. Third, where the proposed new start project is part of a multimodal alternative that includes major highway components, the baseline alternative will be the preferred multimodal alternative without the new start project and associated transit services. Prior to submittal of a request to enter preliminary engineering for the new start project, grantees must obtain FTA approval of the definition of the baseline alternative.

Consistent with the requirement that differences between the new start project and the baseline alternative measure only the benefits and costs of the project itself, planning factors external to the new start project and its supporting bus service must be the same for both the baseline and new start project alternatives. Consequently, the highway and transit networks defined for the analysis must be the same outside the corridor for which the new start project is proposed. Further, policies affecting travel demand and travel costs, such as land use, transit fares and parking costs, must be applied consistently to both the baseline alternative and the new start project alternative.

The Final Rule has been rewritten to substitute ''baseline alternative'' wherever ''no-build and TSM alternatives'' appeared in the NPRM, and a definition for ''baseline alternative'' has been added.

''Existing land use, transit supportive land use policies, and future patterns'' is not listed among the project justification criteria contained in 49 U.S.C. 5309(e)(1)(B), but is listed as one of the ''considerations'' under 49 U.S.C. 5309(e)(3) that FTA must take into account when determining a proposed project's ''justification.'' Consistent with past practice, we have included land use among the project justification

criteria for a number of reasons. Transit-supportive land use, whether it is a factor of existing patterns, existing local policies, or planned future development which targets development around the Federally-assisted project, has been an important indicator of future project success. Additionally, TEA–21 added two new land-use-related considerations to the project evaluation process: The reduction in local infrastructure costs achieved through compact land use development (49 U.S.C. 5309(e)(3)(B)), and the cost of suburban sprawl (49 U.S.C. 5309(e)(3)(C)). This appears to be a clear intent by Congress to give additional attention to this issue. The NPRM for this Rule labeled the land use criteria as ''transit supportive existing land use policies and future patterns.'' This has been changed to ''existing land use, transit supportive land use plans, and future patterns'' in this Rule, to more accurately reflect FTA's practices in evaluating land use issues relating to proposed new starts. The underlying factors described in paragraph (e) of Appendix A to this rule have been revised in response to this change.

In making the determination of project justification, 49 U.S.C. 5309(e)(3) requires the FTA to consider a variety of factors, as follows:

1. The direct and indirect costs of relevant alternatives;
2. Factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;
3. Existing land use, mass transportation-supportive land use policies, future patterns, and the cost of suburban sprawl;
4. The degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;
5. Population density and current transit ridership in the corridor;
6. The technical capability of the grant recipient to construct the project;
7. Differences in local land, construction, and operating costs; and
8. Other factors that the Secretary determines appropriate.

This represents a modest expansion of the ''considerations'' established by ISTEA. Specifically, section 3009(e) of TEA–21 added the consideration for the cost of suburban sprawl noted in (3) above; for population density and current transit ridership in the corridor in (5) above; and for the technical capacity of the grantee to carry out the proposed project in (6) above. The ''considerations'' serve to illustrate the project justification criteria, providing further detail on specific information that should be collected and how the criteria should be evaluated. Much of the data required to consider these factors is already developed as part of the existing planning and project development processes, however, as required under 23 CFR part 450 and 23 CFR part 771. FTA believes these considerations are already adequately addressed by the current project justification criteria and measures.

When evaluating proposed new starts projects, FTA will apply these criteria to the project as proposed for Federal funding under 49 U.S.C. section 5309. This means that if local project sponsors are seeking new starts funding at this time for a segment of a larger planned transit investment, only that specific segment will be evaluated.

Comment. FTA received 24 comments relating to the criteria for mobility improvements. Of these, 15 addressed the issue of mobility for low-income households. Ten commenters recommended revising the low-income mobility measure to include destinations, such as employment areas, within ½-mile of boarding points, in addition to the existing measure for households. Two commenters recommended expanding the low-income household measure to include other populations that tend towards transit-dependence, such as senior citizens, students, and persons with disabilities. One recommended accounting for discretionary riders, and another suggested eliminating the measure for low-income mobility, perceiving that it perpetuated an image of transit as a carrier of poor people that persons of middle-class status would not want to ride. One commenter suggested that low-income mobility be separated from the measure for mobility improvements.

Other comments on this measure included two recommendations to incorporate a consideration for congestion, two requests to incorporate a measure for delays and ''incidents'' on the transit system, various calls for ''better measures,'' and recommendations that different measures be applied to different modes of transit (*i.e.*, light rail versus commuter rail).

Response. FTA recognizes that a system that is located near low-income households is of little use to residents unless it can also provide access to employment centers and other activity centers. Therefore, a factor for destinations within a ½-mile radius of new stations has been added to the measure for mobility improvements.

FTA is required by section 5309(e)(3)(D) to ''consider the degree to which the (proposed) project increases the mobility of the mass transportation dependent population, or promotes economic development.'' For a variety of reasons, low-income households were chosen as a surrogate for measuring the transit dependent population. Chief among these is the fact that transit dependence is often a factor of income. Many people rely on transit service for basic mobility—some by necessity, and some by economic choice; many residents of upscale central city neighborhoods simply choose not to own an automobile. There is value in considering all of these people in the measure for basic mobility; however, were transit service suddenly eliminated, those riders with an economic choice would find other alternatives available to them. Further, many of those riders who ride transit by choice do so because it permits them to bypass congestion on highways and city streets. These benefits would already be accounted for in the measure for travel time savings. The focus on low income households provides a clearer—though still imperfect—assessment of how well the proposed project would serve those who do not have the ability to choose; *i.e.*, the mass transit dependent population specified in the statute.

The comments calling for better measures to assess the mobility improvements of a proposed project are well taken; unfortunately, no recommendations for new measures or methodologies accompanied those comments. FTA is as interested as the transit industry in advancing the state of the art of transit planning, and is conducting research into better ways to measure the various benefits of transit service, particularly high-quality rail systems. Beginning on September 1, 2001, this Rule employs a revised measure of travel benefits based on a multimodal measure of perceived travel times faced by all users of the transportation system. As new measures and methods become available, FTA may amend or modify this rule.

Comment. Ten comments were received on the criterion for environmental benefits; no two were alike. One interest group suggested that impacts on areas where energy is generated (*i.e.*, the location of a remote generating plant) be incorporated into the evaluation, and that energy comparisons be made on a passenger-mile basis. One transit operator recommended incorporating ''non-scientific 'quality of life' '' factors. Two interest groups objected to the use of BTUs, with one suggesting the use of

vehicle miles traveled (VMT) instead and the other suggesting that if it is retained, the measure should be limited to non-renewable energy sources and should include energy used in construction. Two commented that greater weight should be given to proposed projects in nonattainment areas, and one individual commenter recommended that other benefits should be included, such as reduced parking demand which would reduce parking lot runoff. One local government recommended that the evaluation consider wetlands and endangered species habitats.

Response. It should be noted that this evaluation does not represent the only relationship between the new starts process and environmental considerations. All proposed new starts projects must meet NEPA requirements as a condition of eligibility for funding. Thus, factors such as runoff, wetlands, and the habitat of endangered species are already considered. In addition, EPA classifications for attainment/nonattainment are also considered as part of the evaluation of environmental benefits for all proposed new starts projects.

To the extent that ''greater weight'' can be given to proposed projects in nonattainment areas, 49 USC 5309(e)(8)(B) provides expedited procedures for FTA decisionmaking and prohibits any limitations on the simultaneous evaluation of proposed projects in at least two corridors in such cases. This is reflected in paragraph (c) under § 611.3 of this rule. It should be noted that previously, these projects were also exempt from evaluation under the new starts criteria; this provision was among those eliminated by TEA–21.

Quality of life issues, to the extent that they can be identified and defined for individual projects, are more appropriately addressed in the ''other factors'' criteria than as part of the measures for environmental benefits.

BTUs were chosen as the measure for reporting energy consumption because they represent a universal and universally-accepted measure of energy. While it may be possible to evaluate changes in energy consumption in terms of gallons of gasoline, gallons of diesel fuel, barrels of crude oil, kilowatt-hours of electricity, or tons of coal, a universal measure is needed to compare these energy sources to each other and to evaluate the benefits of one project in comparison to others.

Comment. Three comments were submitted on the measures for evaluating operating efficiencies. One operator of a major northeastern transit system commented that the change in operating cost per passenger mile would give high marks for crowding and penalize proposed projects that would mitigate crowding, a topic that was raised by others in comments relating to the measure for cost effectiveness. One interest group recommended no changes to the measure, but suggested that the TSM alternative be dropped after entry into preliminary engineering and proposed language for incorporation into the rule. One individual commenter opined that cost per passenger mile is easily manipulated, costs vary across the country, and recommended the establishment of thresholds for number of peak and off-peak passengers, with a pass/fail rating.

Response. Concerns regarding the ''ease'' with which information for this measure might be ''manipulated'' are noted, but they are ultimately not relevant to the process. Project sponsors are required to certify to FTA that the information submitted under the project evaluation criteria is developed in compliance with FTA's technical guidance. Any attempt at manipulation of data would likely be discovered during the evaluation and approval process. This measure is but one of the many criteria under which proposed new starts are evaluated, and will not by itself ''make or break'' a project. The other comments are addressed elsewhere in the preamble to this rule.

Comment. FTA received a total of 32 comments on the measure for cost effectiveness. The NPRM for this rule solicited comment on the retention of FTA's historical ''cost per new rider'' (or more properly, incremental cost per incremental rider) measure to indicate cost effectiveness, and asked if there were other measurements. Twenty-three comments were submitted in response this request. An additional nine commenters addressed this issue as part of their general comments on the NPRM. All were unanimous in their assertion that the cost effectiveness measure should ''roll up'' additional benefits beyond incremental cost per incremental rider. The consensus was that focusing on new riders alone ignores benefits to other riders, and thus biases the measure against older cities with ''mature'' transit systems where the focus of a proposed new start would be on improving service, not attracting new riders. Most recommended a measure based on ''cost per benefiting rider'' or simply ''cost per rider.'' The most common examples of benefits given in comments were reductions in crowding and travel time savings. A trade group representing the transit industry recommended the formation of a committee to study the issues. One transit operator recommended a ''full-cost accounting approach'' incorporating the full range of societal impacts, including local policy decisions on land use and parking; another operator recommended a measure based on transit system throughput. Others recommended including cost per new trip, new riders attracted to the existing system by the new start, total annualized cost per rider, travel time savings, and accounting for the conversion of multimodal trips to transit trips, and single-occupant vehicle (SOV) trips to multimodal trips.

Response. It is important to note that the measure for cost effectiveness is not intended to be a single, stand-alone indicator of the merits of a proposed new starts project. It is but one part of the multiple measure method that FTA uses to evaluate project justification under the statutory criteria. While cost effectiveness is an important consideration, so are mobility improvements, environmental benefits, and the other factors described both in TEA–21 and elsewhere in this rule.

However, FTA is aware that the cost effectiveness measure is often interpreted by project sponsors, State and local decisionmakers, and even elsewhere within the Executive and Legislative branches of the Federal government as ''the'' measure that will ''make or break'' a proposed new start. In light of this, and in response to the unanimous call by commenters for a ''better'' measure of cost effectiveness, FTA has developed a measure of ''transportation system user benefits'' to more accurately address the criteria for cost effectiveness. In simple terms, the basic goal of any major transportation investment is to reduce the amount of travel time and out-of-pocket costs that people incur for taking a trip; the cost of mobility. The new Transportation System User Benefits measure of cost effectiveness measures the change in these costs, and accounts for changes to transit, highway, and other modes of travel.

This new cost effectiveness measure replaces the current ''dollars per new rider'' figure that can be—and often is—perceived as ''subsidy per new rider.'' This approach de-emphasizes new riders and measures not only the benefits to people who change modes, but also accounts for benefits within modes (*i.e.*, benefits to existing riders and highway users).

The Transportation System User Benefits measure is not new to FTA or to the new starts project evaluation process. A similar combination of cost

and travel time savings for new and existing riders was identified as a measure for cost effectiveness in the 1984 Statement of Policy on Urban Mass Transportation Major Capital Investments.

User benefits are a good measure of the effectiveness of a major transit investment; however, the Transportation System User Benefits measure should not be interpreted as a single measure of all of the expected benefits of a new starts project. Those in search of a single measure that ''rolls up'' the overall benefits expected of a proposed new start should direct their attention towards the overall rating for project justification; the Transportation System User Benefits measure of cost effectiveness is but a single component.

This rule has been revised to reflect this new approach. In addition, FTA will publish guidance describing how project sponsors should calculate and report the new cost effectiveness measure for evaluation purposes. The new Transportation System User Benefits measure of cost effectiveness will be phased in over time, becoming effective on September 1, 2001.

Comment. FTA received a total of 19 comments relating to the land use criterion. In general, the comments reflected a general concern over how land use will be measured and used as a factor for project evaluation.

While there was no clear pattern to the comments, a number of recurring themes were apparent. One of these themes was ''flexibility.'' A transit industry trade association and a new starts interest group supported the measure in general, but noted that its application should be flexible enough to account for regional differences, and that guidance would be essential; one recommended that FTA undertake a study of the ''cost of sprawl'' and suggested alternative language for the final rule. One transit operator submitted comments in support of the trade association.

The second theme that arose from the comments concerned the application of the land use measure. Five commenters expressed confusion or concern over a perceived vagueness of the land use criterion, terming it ''nebulous,'' ''vague'' and ''ambiguous.'' Two commenters noted that land use issues would already be captured by other project justification measures or through the modeling process, and two others expressed concerns over a perceived reporting burden. Two more commented that land use would vary greatly by alternative and alignment. One transit operator in a major northeastern city and one commenter at the Oakland, CA workshop expressed concern that the measure for land use would bias the new starts process in favor of suburban projects. One transit operator in a southwestern city that does not have zoning ordinances recommended incorporating a consideration for voluntary actions by the community to coordinate station area development, and objected to the elevation of land use considerations to the ''status'' of the other statutory criteria. An operator in another southwestern city in the same State commented that ratings should be based only on factors over which transit operators have control, and noted that similar evaluation criteria should be applied to FHWA funds. In contrast, a council of governments from a city in the Pacific Northwest recommended that FTA give significant weight to regions with a history of containing sprawl.

The final common theme among some of the commenters was to question the connection between land use and transportation planning. One commenter noted that the criterion assumes coordination between transportation and planning, and two questioned or flatly rejected any correlation between transportation and land use.

Response. This rule does not represent a substantial change from existing FTA policy or practice. Even prior to TEA–21, FTA included land use among the primary evaluation criteria. As noted earlier in this preamble, while land use is not one of the project justification criteria specified in Federal transit law, it is included among the factors that FTA is to consider when applying those criteria. Additionally, TEA–21 added two new land use considerations to the evaluation process; a clear intent by Congress to give additional attention to this issue. Contrary to those comments that questioned the link between transportation and land use, FTA has found that transit supportive local land use policies have been an important indicator of the future success of Federally-assisted new starts projects.

In response to the comment that highway projects should be subject to a similar evaluation of land use, FTA is tempted to agree. However, as noted in response to a similar comment on the alternatives analysis requirement, highway projects are funded under a formula program and are not subject to the same evaluation process as transit new starts, which are funded under a discretionary program, and FTA is not at liberty to change the law or otherwise impose such a requirement.

Finally, in terms of flexibility in the application of the land use criteria, FTA finds that the existing process, which will continue under this rule, offers an acceptable balance between the need for comparability among proposed projects and the desire to permit project sponsors in each region to highlight their own successes in linking transit and land use planning. This can and often does include privately-sponsored transit-oriented development. A new starts investment requires a regional commitment by a variety of State and local agencies, as well as the community at large; those who have a stake in the financing and construction of a new start also have a stake in its ultimate success. Thus, it is not unreasonable to expect the same degree of commitment to regional planning as to project funding.

Reflecting that same concept of local commitment, this Rule also incorporates an element for pedestrian mobility into the land use measure. Pedestrian mobility has been a component of FTA's land use evaluation, as described in guidance issued each year at the beginning of the data collection process. This Rule formalizes that approach. Pedestrian facilities represent the basic, common link among all modes of transportation; therefore, a regional emphasis on pedestrian facilities and systems as part of land use planning will enhance the mobility of the population and the utility of the planned transit investment. Language has been added to appendix A of this Rule to specify that the land use measure will include consideration of existing and planned pedestrian facilities, which are expected to reflect curb ramp transition plans and milestones as required under 28 CFR 35.150(d)(2).

F. Section 611.11: Local Financial Commitment

Section 5309(e)(1)(C) requires that proposed projects also be supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain and operate the system or extension. This proposed rule retains the following measures for evaluation of the local financial commitment to a proposed project:

1. The proposed share of total project costs from sources other than the section 5309 new starts program, including Federal formula and flexible funds, the local match required by Federal law, any additional capital funding (''overmatch''), and the degree to which initial planning activities have

been carried out without relying on funds from § 5309.

Comment. Three commenters expressed confusion over whether ''non-5309 funds'' included only local funds, or whether other Federal funds would be counted as part of ''local'' funding.

Response. Paragraph (a) under the heading, ''Local Financial Commitment'' in Appendix A to this rule has been revised to specify that the proposed local share of project costs is defined as the percentage of capital costs to be met using funds from sources other than the new starts program under 49 U.S.C. 5309. Thus, the use of flexible funds from other Federal sources will not be considered as part of the ''Federal share'' for purposes of evaluation under this Rule (though for purposes of funding eligibility the statutory ratio of at least 20 percent local funding must still be met using other than Federal funds).

2. The stability and reliability of the proposed capital financing plan (rated ''high,'' ''medium-high,'' ''medium,'' ''low-medium,'' or ''low'').

3. The stability and reliability of the sponsoring agency to fund the operating needs of the entire transit system as planned once the guideway project is built. Ratings of ''high,'' ''medium-high,'' ''medium,'' ''low-medium,'' or ''low'' will be used to describe stability and reliability of operating revenue.

The measures for these criteria are carried over intact from those used previously, and are more fully explained in Appendix A. The only changes are that ''overmatch'' was added as a statutory consideration by TEA–21, and an acknowledgement was added that FTA will consider whether adequate provisions have been made to fund the capital needs of the entire transit system as planned, including key station plans and milestones as required by the Americans with Disabilities Act.

Comment. Eleven commenters expressed varying opinions and made numerous recommendations on the local financial commitment criteria, but no clear theme emerged. A transit industry trade group urged FTA to consider not only the strength of the funding plan, but also the degree of commitment, the level of policy commitment to the project and funds already secured, and recommended addressing the level of commitment to the overall capital program. One transit operator from the mid-Atlantic region expressed support for the trade association's position. An industry interest group requested more detailed, prescriptive requirements. One State DOT that is also a Statewide transit operator wrote in support of their trust-fund-supported Statewide intermodal system, and stated that projects in such States should not be judged inferior to those that rely on project-specific ballot measures.

Response. The existing project evaluation and rating process, already accounts for factors such as the strength of the local commitment, the level of policy commitment to the proposed project, the level of commitment to the overall capital program. This practice would continue under this rule. Contrary to the comment implying that Statewide trust funds would be judged ''inferior'' to other financing plans, such dedicated funding sources offer a distinct advantage in the rating process. It should be noted, however, that the mere existence of a dedicated Statewide funding source is not sufficient to achieve a high rating; as a project proceeds through preliminary engineering and final design, evidence that sufficient funds have been committed and programmed to the project will also be required. The comment that this Rule is not prescriptive enough is puzzling; Federal agencies are more often criticized for being too prescriptive and inflexible. This Rule is intended to strike a balance between the need to apply a consistent standard, and the need to allow for the differences inherent in locally-derived projects.

G. Section 611.13: Overall Project Ratings

Perhaps the most significant change to this process brought by TEA–21 is the requirement that FTA establish summary recommendations for each project, in addition to the ratings for each of the project justification criteria. Section 5309(e)(6) requires FTA to ''evaluate and rate (each) project as 'highly recommended,' 'recommended,' or 'not recommended,' '' based on the results of the project evaluation process. It also requires that ratings be assigned to each of the individual evaluation criteria.

FTA will combine the ratings for each of the financial rating factors and project justification criteria into overall ''finance'' and ''justification'' ratings of ''high,'' ''medium-high,'' ''medium,'' ''low-medium,'' or ''low.'' These ratings will then be combined into the single, overall project ratings required by TEA–21. For a proposed project to be rated as ''recommended,'' it must be rated at least ''medium'' in terms of both finance and justification. To be ''highly recommended,'' a proposed project must be rated at least ''medium-high'' for both finance and justification. Proposed projects not rated at least ''medium'' in both finance and justification will be rated as ''not recommended.'' These ratings will be used both to approve entry into preliminary engineering and final design, as input to recommend proposed projects for Federal funding commitments, and for purposes of the Annual and Supplemental Reports on New Starts under section 5309(o)(1) and (2). A proposed project must receive a rating of at least ''recommended'' in order to be approved for any of these purposes.

Comment. A total of 14 comments addressed the overall project ratings. Virtually all of them expressed discomfort with the terms, particularly the term, ''not recommended.'' The most common concern was that a meritorious project would be rated ''not recommended'' simply because it had not been sufficiently developed to be rated. Nine commenters suggested renaming the ''not recommended'' rating or creating a separate rating such as ''not ready for recommendation,'' ''not rated,'' ''not ready,'' ''incomplete,'' or ''not currently recommended.'' One commenter at the Washington, DC workshop noted that proposed projects that ''fail'' should be provided with information explaining the rationale for the ratings. There was also substantial discussion at all three workshops concerning the permanence of the ratings, opportunities to change ratings, and so forth.

Response. The terms used for the overall project ratings—''highly recommended,'' ''recommended'' and ''not recommended'' '' are established in law by TEA–21, and FTA is not at liberty to change them. We can, however, elaborate. While the names used for the overall ratings will continue to be given as ''highly recommended,'' ''recommended'' and ''not recommended,'' in the case of the ''not recommended'' rating we will indicate the reason for the rating. In order to be rated at least ''recommended,'' a proposed new starts project must be rated at least ''medium'' for both project justification and local financial commitment. In order to be rated at least ''medium'' for local financial commitment, a proposed project must be rated at least ''medium'' in terms of the stability and reliability of operating funds, and the stability and reliability of capital funding. When a proposed project is rated ''not recommended,'' FTA will indicate which of these areas requires improvement: ''J'' for project justification, ''O'' for the operating funding plan, and ''C'' for the capital funding plan. Thus, a proposed new

start that was found to need improvement in the capital plan would be rated ''not recommended (C).'' This will provide project sponsors, State, local, and Federal decisionmakers, and the public at large with a simple means to identify the basis for the project rating. In addition, the Annual and Supplemental Reports on New Starts, as well as all project-specific FTA correspondence, will contain language that discusses the reasoning behind the rating and note that all ratings are subject to change.

Comment. Three commenters recommended that the ratings be tied to a proposed project's stage of development; *i.e.*, different standards for preliminary engineering and final design.

Response. FTA has historically applied different rating standards for different stages of project development, recognizing that it is not possible to expect the same level of detail or degree of certainty for proposed projects that are in preliminary engineering as for those nearing the end of final design and contemplating FFGAs. Each edition of the Annual Report on New Starts contains tables describing the standards applied for each of the criteria at each stage of development. This Rule does not change FTA's historical approach.

It is important to note that a *rating* of ''recommended'' does not translate directly into a *funding* recommendation in any given fiscal year. Rather, the overall project ratings are intended to reflect overall project merit. Proposed projects that are rated ''recommended'' or ''highly recommended,'' *and* have been sufficiently developed for consideration of a Federal funding commitment (i.e., FFGA), will be *eligible* for funding recommendations in the Administration's proposed budget for a given fiscal year.

Comment. A transit industry trade association expressed concern that proposed projects in the early stages of development would be rated ''not recommended'' because sufficient information has not been developed to address the justification criteria, and/or local funding is not in place. This, they advise, would compromise the future of such projects. They therefore suggested that the statutory ratings of ''highly recommended,'' ''recommended,'' and ''not recommended'' be used only in the context of annual funding recommendations to Congress.

Response. The distinction between a rating of ''recommended'' and a funding recommendation continues to be the subject of much confusion. The comments submitted by the trade association are most illustrative of this confusion. They are concerned that projects that are ''not ready'' to be rated will be unfairly given a ''not recommended'' rating simply because they are still early in the development process. They therefore suggest that the overall ratings be used only for purposes of FTA's annual funding recommendations to Congress, and not as an indicator of overall merit. Were FTA to adopt this suggestion, however, it would guarantee that all projects for which FTA did not recommend funding in the President's budget request would receive a summary rating of ''not recommended,'' regardless of merit; *i.e.*, it would actually cause the effect the trade association wishes to avoid, and would increase, not decrease, the degree of confusion over these ratings. FTA is convinced that Congress intended for the overall ratings to be used to denote project merit, and that FTA's practice of applying different rating standards at different stages of project development already prevents the difficulties imagined by the trade association. Further, FTA would like to remind the transit industry, Federal, State and local decisionmakers, and the public at large that proposed new starts projects are re-rated at least annually for the Annual Report on New Starts, as well as at the time approval is sought for entry into preliminary engineering, final design, and entry into an FFGA. The overall ratings are not permanent judgements of project worth.

Comment. One transit operator objected to the statutorily-required approval to enter preliminary engineering and final design, urging that proposed projects be permitted to proceed regardless of funding recommendations. This same operator also objected to the requirement that proposed projects be rated at least ''medium'' for both finance and justification, claiming that one category should be sufficient.

Response. This comment also reflects confusion regarding the annual funding recommendations versus a rating of ''recommended.'' Neither FTA's project funding recommendations nor annual appropriations earmarks have any bearing on FTA's approval for a proposed project to enter the next phase of development. FTA is not persuaded by the argument that a rating of at least ''medium'' for either justification or finance is sufficient, and will continue to require both. To do otherwise would be to suggest that enough money can offset a poorly justified project, or that the inability of project sponsors to secure adequate funding would not be a barrier if the proposed project is ''good enough.'' Clearly neither is the case. It takes a worthy project with a sound local financial commitment to ensure a successful new start.

VII. Response to Request for Comments on Particular Issues

The NPRM specifically solicited comment on four issues: (1) Should FTA establish ''threshold'' or ''pass/fail'' values for evaluating each of the project evaluation criteria, and if so, what values would be appropriate; (2) Are there other means for measuring cost effectiveness than the current ''cost per new rider'' measure; (3) How should FTA evaluate the ''technical capability'' of project sponsors, and what ''other factors'' might be appropriate; and (4) How much relative attention should be given to each of the criteria in establishing the overall project ratings. A total of 31 individuals or organizations submitted comments on one or more of these questions.

Question 1: Threshold Values. Consistent with FTA's 1996 Statement of Policy and prior practice, this proposed rule does not establish ''threshold'' values for the statutory project justification criteria. Instead, we rate each project as ''high,'' ''medium-high,'' ''medium,'' ''low-medium,'' or ''low'' according to its individual merits under each of the measures. Should FTA establish ''threshold'' or ''pass/fail'' values for evaluating each of these criteria? If so, what thresholds are appropriate for each criterion?

Comment. Of the 16 responses received on this issue, 12 opposed the establishment of any type of threshold or pass/fail values for the criteria. One interest group and one local government entity dissented, supporting such requirements. One transit operator supported thresholds, but only on the condition that FTA revise the cost effectiveness measure to account for additional benefits such as travel time savings. One commenter at the Oakland, CA workshop commented that any thresholds would have to account for geographic differences. One operator noted that if thresholds are deemed necessary, they should be based on the mean or lowest value for prior ''recommended'' projects, or ranges should be established.

Response. This rule does not establish threshold values for rating purposes.

Question 2: Cost Effectiveness. FTA has historically relied on the measure of ''cost per new rider'' (more precisely, incremental cost per incremental rider) to indicate cost effectiveness, an approach retained in this proposed rule. Are there other means for measuring the cost effectiveness of a proposed new starts project?

Comment. The 23 comments that specifically addressed this question were unanimous in the assertion that the cost effectiveness measure should ''roll up'' additional benefits beyond incremental cost per incremental rider. The consensus was that focusing on new riders alone ignores benefits to other riders, and thus biases the measure against older cities with ''mature'' transit systems where the focus of a proposed new start would be on improving service, not attracting new riders. Most recommended a measure based on ''cost per 'benefiting' rider'' or simply ''cost per rider.'' The most common examples of benefits given in comments were reductions in crowding and travel time savings. A trade group representing the interests of the transit industry recommended the formation of a committee to study the issues. One transit operator recommended a ''full-cost accounting approach'' incorporating the full range of societal impacts, including local policy decisions on land use and parking; another operator recommended a measure based on transit system throughput.

Response. In response to the near-universal call for a new measure of cost effectiveness, FTA has developed a new Transportation System User Benefits measure. This measure is described more fully in the section of the preamble to this rule that discusses comments to the cost effectiveness measure. It should be repeated, however, that the Transportation System User Benefits Measure will be used to evaluate cost effectiveness; the overall measure for project justification represents the ''roll-up'' of anticipated benefits.

Question 3: Technical Capability/ Other Factors. 49 U.S.C. 5309(e)(3) establishes a number of ''factors'' that FTA must consider when evaluating proposed projects under the justification criteria. In particular, 49 U.S.C. 5309(e)(3)(F) directs us to ''consider the technical capability of the grant recipient to construct the project,'' and 49 U.S.C. 5309(e)(3)(H) directs FTA to consider ''other factors'' as ''appropriate.'' How should FTA evaluate the ''technical capability'' of project sponsors? What ''other factors'' might be appropriate?

Comment. Of the 18 commenters who responded to this question, 14 recommended that technical capacity be based on factors related to the project sponsor's experience or ''track record'' with prior new starts, the strength of the project's management plan, or some combination of these factors. One interest group and one transit operator noted that most project sponsors lack the technical expertise to implement a new start, which is why they hire contractors; one of these commenters asserted that any technical capacity measure would therefore favor existing systems with their own technical staff. However, seven commenters recommended that the experience of contractors, management teams, and/or other agency resources be considered. Two commenters recommended an evaluation including sponsors' prior success in obtaining local funds. One commenter at the Oakland workshop expressed confusion regarding the difference between a measure for technical capacity and the triennial review process.

Response. FTA intends to use the technical capacity factor as an indicator of the ability of the project sponsor(s) to successfully implement a proposed new start, as well as an indicator of project ''readiness.'' To successfully implement a new starts project, the project sponsor(s) must meet the same basic legal, financial, and eligibility requirements for all FTA grants; have an adequate project management plan in place, and have adequate resources available to carry out the project management plan. By ''readiness,'' we mean that there are no outstanding issues that remain to be resolved before a funding commitment can be considered. Such outstanding issues might include unresolved environmental or mitigation issues, outstanding engineering or right-of-way issues, upcoming referenda or board actions that are crucial to the financing plan, and issues relating to other basic requirements including Title IV of the Civil Rights Act; Environmental Justice; key station, fleet accessibility, complimentary paratransit, and other requirements under the Americans with Disabilities Act of 1990; and consistency with National Intelligent Transportation Systems Architecture.

Comment. Six commenters offered suggestions regarding ''other factors'' that should be considered. Two of these recommended incorporating a factor for ''smart growth'' or ''livable communities,'' with one further recommending that forecasts used for such a measure be grounded in MPO forecasts and that ''extra credit'' be given to projects which support national priorities. One transit industry trade group recommended that ''other factors'' be open-ended. Other recommendations included measures for new ridership, ''willingness to commit funds,'' and advancement of multimodal choice.

Response. Many of the suggestions submitted by commenters to the NPRM, such as smart growth, livable communities, and ''willingness to commit funds,'' are already captured in the primary criteria. FTA intends for the ''other factors'' category to be used as a means of portraying factors about a proposed project that the other evaluation criteria do not adequately address. Each new start is unique, each has its own ''story;'' the ''other factors'' category will permit project sponsors and FTA to consider elements of the proposed project that may otherwise be ignored in the evaluation process. FTA has therefore taken a more ''open-ended'' approach to the use of ''other factors'' in this Rule, and has not defined specific factors for this category.

Question 4: Relative Attention to Criteria. FTA also seeks comment on how much relative attention should be given to each of the project justification criteria (mobility improvements, environmental benefits, operating efficiencies, cost effectiveness, land use and other factors) to establish the overall project ratings.

Comment. Of the 16 comments received on this issue, nine supported some kind of weighting of the criteria in general, but few were specific as to which should be weighted more or less, or what those specific weights should be. Two commenters noted that the relative importance of the criteria should vary over time, either over the course of project development or as national priorities change. Three indicated that different weights should apply according to geographic area or local conditions; the citizens' advisory committee from a transit operator in a major northeastern city recommended that cost effectiveness not be considered at all in that city. Only two comments, one from a State DOT and one from an individual member of the public, recommended specific weights for specific criteria. Four comments specifically stated that there should be no weighting at all, with one major northeastern transit operator stating that the ''weights'' already used by FTA, as reported in a recent GAO report, be discontinued.

Response. This rule does not establish specific weights for specific project evaluation criteria.

VIII. Other Comments

Additional comments were submitted to the docket concerning a variety of issues that are not easily categorized. These included issues such as concerns regarding definitions of terms used in the NPRM, to regional concerns, to the relationship with the pending FTA/ FHWA joint planning rule, to objections

regarding the differences between FTA and FHWA capital programs.

Comment. Four commenters expressed concerns that the FTA new starts process complicates the design-build or ''turnkey'' approach. Two additional, related comments recommended that FTA approve FFGAs as early as possible in final design, or perhaps late in preliminary engineering.

Response. Nothing in this rule prevents project sponsors from proceeding with a new start under a design-build approach. No existing FFGA requirements will be changed or waived to accommodate the design-build process. FTA will provide guidance to project sponsors to clarify how the design-build process can be integrated with the new starts project development process and the FFGA requirements.

Comment. Two transit operators, one large and one small, commented that the approach proposed in the NPRM biases the process against ''established systems in mature cities,'' calling again for more emphasis on benefits to existing riders and ''preservation of high market shares.''

Response. The Transportation System User Benefits measure for cost effectiveness moves away from the perceived emphasis on new riders and takes a much broader view of the benefits of transit. In addition, project sponsors are reminded that the cost effectiveness measure was not and is not intended as a single indicator of project merit. Established systems in mature cities may not be able to claim as many new riders as a brand-new system may expect, for example, but they have a distinct advantage under the land use criteria.

Comment. One large operator objected to the evaluation of ''segments'' as separate projects, recommending that segments also be considered in relation to an entire proposed system. Another operator recommended consideration of how well a proposed new start would complement other Federal investments.

Response. In many cases, local project sponsors propose an extensive regional fixed guideway transit system that must be implemented in phases over time, as Federal, State, and local funding permits. To ascribe all of the projected benefits of an entire such system to an initial segment overstates the benefits of that segment and prevents equitable comparison with other proposed new starts. Taken to its logical conclusion, it could be argued that measuring the same systemwide benefits for subsequent segments would double-count those benefits. FTA will continue to evaluate new starts projects as they have been proposed to us for funding. This Rule retains the existing requirement that segments be evaluated as individual projects.

Comment. One interest group claimed that alternatives analyses lack independence and objectivity, recommending that the process instead require a vote on options or an independent poll upon circulation of the Draft Environmental Impact Study (DEIS).

Response. Alternatives analysis is intended to be a means whereby the local community identifies a transportation problem and evaluates alternative solutions, eventually selecting one that best meets local needs—the locally-preferred alternative. It is incumbent upon the community to ensure that adequate opportunity for public involvement is provided, and to take advantage of those opportunities to be part of the process.

Comment. One small transit operator recommended that the final rule include a schedule of deadlines for approval of proposed projects to advance, and a list of FTA contacts.

Response. The comment regarding schedules and deadlines for approval assumes that all proposed new starts projects in TEA–21 will be implemented, will all be found to be justified and rated as ''recommended'' or higher, and will all proceed at the same rate of progress. FTA understands the desire by one commenter for a list of FTA contacts to be published as a part of this rule. However, to do so would require an amendment to this rule, including issuance of an NPRM and a minimum 60-day period for public comment, for each change in personnel. Project sponsors are instead encouraged to contact the appropriate FTA Regional Office for their area, as follows:

- Region 1 (ME, VT, NH, MA, RI, CT): Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093. Phone 617–494–2055.
- Region 2 (NY, NJ): One Bowling Green, Room 429, New York, NY, 10004–1415. Phone 212–668–2170.
- Region 3 (PA, MD, WV, VA, DC): 1760 Market Street, Suite 500, Philadelphia, PA, 19103–4124. Phone 215–656–7100.
- Region 4 (KY, TN, NC, SC, GA, FL, AL, MS, PR): Atlanta Federal Center, 61 Forsyth Street, SW, Suite 17T50, Atlanta, GA, 30303. Phone 404–562–3500.
- Region 5 (MN, WI, MI, IL, IN, OH): 200 West Adams Street, 24th Floor, Suite 2410, Chicago, IL, 60606–5232. Phone 312–353–2789.
- Region 6 (NM, TX, OK, AR, LA): Fritz Lanham Federal Building, 819 Taylor Street, Room 8A36, Fort Worth, TX, 76102. Phone 817–978–0550.
- Region 7 (NE, IA, KS, MO): 901 Locust Street, Suite 404, Kansas City, MO, 64106. Phone 816–329–3920.
- Region 8 (MT, ND, SD, WY, UT, CO): Columbine Place, 216 16th Street, Suite 650, Denver, CO, 80202–5120. Phone 303–844–3242.
- Region 9 (CA, NV, AZ, HI, AS, GU): 201 Mission Street, Suite 2210, San Francisco, CA, 94105–1831. Phone 415–744–3133.
- Region 10 (WA, OR, ID, AK): Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA, 98174–1002. Phone 206–220–7954.

Comment. An advisory committee to a large northeastern transit operator recommended that the criteria account for ''Congressional funding anomalies.''

Response. ''Congressional funding anomalies,'' such as annual appropriations for new starts projects that do not follow the amounts committed under the FFGA for a particular project in a given year, are only a factor in the case of projects for which FFGAs have already been issued. The execution of an FFGA represents the conclusion of the project rating process. Therefore, appropriations shortfalls do not affect the project rating process. When making annual funding recommendations for new starts, FTA attempts to adjust its funding requests to account for prior year shortfalls, but this requires no changes to the project rating criteria, measures, or process. No change to this rule has been made in response to this comment.

IX. Regulatory Evaluation

The Federal Transit Administration (FTA) has evaluated the industry-wide costs and benefits of the rule, Major Capital Investment Projects, which is required by section 3009(e) of TEA–21. This rule sets forth the process that FTA will use to evaluate and rate major capital investments under the statutory criteria in 49 U.S.C. section 5309(e), which requires FTA to establish overall project ratings of ''highly recommended,'' ''recommended,'' or ''not recommended,'' and to consider new criteria elements. The changes required by TEA–21 to FTA's pre-existing statutory criteria are relatively minor and affect FTA program management operations more than a recipient's operations. The final regulatory evaluation is available for public inspection in the docket established for this rulemaking.

X. Regulatory Process Matters

A. Executive Order 12688

The FTA has evaluated the industry costs and benefits of the major capital investments rule and has determined that it is a significant rule under E.O. 12688 because of the significant policy issues involved in federally funding major capital investments. This rule will not, however, have an impact on the economy of $100 million or more.

FTA estimates the costs associated with this Rule to be minimal. This Rule implements specific changes required under TEA–21 in the administration of the new starts program under 49 U.S.C. 5309.

The following tables show the costs associated with this Rule. The first table indicates the costs associated with the collection, reporting and analysis of data for the project evaluation and rating process. These costs are associated with activities that are already required as part of the new starts project development process; they do not represent new costs associated with this Rule. Costs are based on estimates of the number of proposed new starts projects that are expected to perform each task listed in the table below.

New starts data submission, evaluation and ratings	Estimated total cost		Total project sponsor cost		
Task	Hours	$	Avg. hrs per	Hours	$
(A) PE Request	7,590	$632,028	450	6,750	$337,500
(B) Annual New Starts Report	8,480	622,416	150	6,000	300,000
(C)Supplemental Report	.....	.....	0	.....	.....
(D) Final Design Request	2,424	204,221	150	1,800	90,000
(E) FFGA Approval	370	16,004	50	250	12,500
Subtotal	18,864	1,474,669	.....	14,800	740,000

NOTE: Difference between Total Cost and Project Sponsor Cost is FTA Cost.

The second table indicates the costs associated with the GPRA data collection requirements contained in this rule. As these requirements are new to the new starts process, the associated costs represent additional costs to FTA and to new starts project sponsors. The estimated total costs include costs to both FTA and to new starts project sponsors who enter into FFGAs. The total project sponsor costs are based on projections that five new FFGAs will be issued per year, and represents the total of the costs to all five project sponsors (*i.e.,* the average cost to each project sponsor is expected to be $1,670,000 / 5, or $334,000).

GPRA-FFGA data collection	Estimated total cost		Total project sponsor cost		
Task	Hours	$	Avg. hrs per	Hours	$
(A) Data Collection Plan	480	$42,336	80	400	$40,000
(B) Before Data Collection	15,200	755,840	3000	15,000	750,000
(C) Documentation of Forecasts	880	42,336	160	800	40,000
(D) After Data Collection	15,200	755,840	3000	15,000	750,000
(E) Analysis and Reporting	1,600	101,680	240	1,200	90,000
Subtotal	.....	1,698,032	.....	32,400	1,670,000

NOTE: Difference between Total Cost and Project Sponsor Cost is FTA Cost.

The third table sums the total costs for both the project evaluation and rating data collection and analysis process, and the GPRA data collection and analysis process.

All data collection and analysis activities	Estimated total cost		Total project sponsor cost		
Task	Hours	$	Avg. hrs per	Hours	$
New Starts Data Submission, Evaluation and Ratings	18,864	$1,474,669	.....	14,800	$740,000
GPRA-FFGA Data Collection	.....	1,698,032	.....	32,400	1,670,000
Total	.....	3,172,701	.....	47,200	2,410,000

NOTE:Difference between Total Cost and Project Sponsor Cost is FTA Cost.

B. Departmental Significance

This rule is a ''significant regulation'' as defined by the Department's Regulatory Policies and Procedures. Because the purpose of this rule is to establish how the Secretary will rate various major capital investment projects, it concerns an important departmental policy and will likely generate a great deal of public interest.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, the FTA has evaluated the effects of this rule on small entities. Based on this evaluation, the FTA hereby certifies that

this action will not have a significant economic impact on a substantial number of small entities because this rule concerns only major capital investments in new fixed-guideway transit systems and extensions, which are not typically undertaken by small entities.

D. Paperwork Reduction Act

FTA will publish an estimate of the paperwork burden required by this Rule in the **Federal Register**, providing a sixty-day period for interested parties to submit comments on FTA's proposed information collection methods. Upon completion of the sixty-day period, FTA will submit its summary of the comments received and any resulting change in the information collection methods to OMB. Upon submission to OMB, FTA will provide an additional thirty days to provide comments on FTA's finalized methods to OMB. Once OMB has reviewed this data for compliance with the Paperwork Reduction Act, OMB will provide FTA with a control number authorizing FTA to collect the requested information. Affected parties will not have to comply with the information collection requirements of this Rule until FTA publishes the OMB control number in the **Federal Register**.

E. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 and it has been determined that the proposed rule will not have federalism implications that impose substantial direct compliance costs on state and local governments.

F. National Environmental Policy Act

The agency has determined that this proposed rule, if adopted, will have positive effects on the environment by encouraging the use of mass transit, which may reduce the use of single occupancy vehicles.

G. Energy Act Implications

This regulation should have a positive effect on energy consumption because, through the Federal investment mass transit projects, it would increase the use of mass transit.

H. Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, of $100,000,000 or more in any one year.

List of Subjects in 49 CFR Part 611

Government contracts; Grant programs—Transportation; Mass transportation

A new part 611 is added to read as follows:

PART 611—MAJOR CAPITAL INVESTMENT PROJECTS

Sec.

611.1 Purpose and contents.
611.3 Applicability.
611.5 Definitions.
611.7 Relation to planning and project development processes.
611.9 Project justification criteria for grants and loans for fixed guideway systems.
611.11 Local financial commitment criteria.
611.13 Overall project ratings.
Appendix A to Part 611—Description of Measures for Project Evaluation.

Authority: 49 U.S.C. 5309; 49 CFR 1.51

§ 611.1 Purpose and contents.

(a) This part prescribes the process that applicants must follow to be considered eligible for capital investment grants and loans for new fixed guideway systems or extensions to existing systems (''new starts''). Also, this part prescribes the procedures used by FTA to evaluate proposed new starts projects as required by 49 U.S.C. 5309(e), and the scheduling of project reviews required by 49 U.S.C. 5328(a).

(b) This part defines how the results of the evaluation described in paragraph (a) of this section will be used to:

(1) Approve entry into preliminary engineering and final design, as required by 49 U.S.C. 309(e)(6);

(2) Rate projects as ''highly recommended,'' ''recommended,'' or ''not recommended,'' as required by 49 U.S.C. 5309(e)(6);

(3) Assign individual ratings for each of the project justification criteria specified in 49 U.S.C. 5309(e)(1)(B) and (C);

(4) Determine project eligibility for Federal funding commitments, in the form of Full Funding Grant Agreements;

(5) Support funding recommendations for this program for the Administration's annual budget request; and

(6) Fulfill the reporting requirements under 49 U.S.C. 5309(o)(1), Funding Levels and Allocations of Funds, Annual Report, and 5309(o)(2), Supplemental Report on New Starts.

(c) The information collected and ratings developed under this part will form the basis for the annual reports to Congress, required by 49 U.S.C. 5309(o)(1) and (2).

§ 611.3 Applicability.

(a) This part applies to all proposals for Federal capital investment funds under 49 U.S.C. 5309 for new transit fixed guideway systems and extensions to existing systems.

(b) Projects described in paragraph (a) of this section are not subject to evaluation under this part if the total amount of funding from 49 U.S.C. 5309 will be less than $25 million, or if such projects are otherwise exempt from evaluation by statute.

(1) Exempt projects must still be rated by FTA for purposes of entering into a Federal funding commitment as required by 49 U.S.C. 5309(e)(7). Sponsors who believe their projects to be exempt are nonetheless strongly encouraged to submit data for project evaluation as described in this part.

(2) Such projects are still subject to the requirements of 23 CFR part 450 and 23 CFR part 771.

(3) This part does not apply to projects for which a Full Funding Grant Agreement (FFGA) has already been executed.

(c) Consistent with 49 U.S.C. 5309(e)(8)(B), FTA will make project approval decisions on proposed projects using expedited procedures as appropriate, for proposed projects that are:

(1) Located in a nonattainment area;

(2) Transportation control measures as defined by the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

(3) Required to carry out a State Implementation Plan.

§ 611.5 Definitions.

The definitions established by Titles 12 and 49 of the United States Code, the Council on Environmental Quality's regulation at 40 CFR parts 1500–1508, and FHWA–FTA regulations at 23 CFR parts 450 and 771 are applicable. In addition, the following definitions apply:

Alternatives analysis is a corridor level analysis which evaluates all reasonable mode and alignment alternatives for addressing a transportation problem, and results in the adoption of a locally preferred alternative by the appropriate State and local agencies and official boards through a public process.

Baseline alternative is the alternative against which the proposed new starts project is compared to develop project justification measures. Relative to the no build alternative, it should include transit improvements lower in cost than the new start which result in a better ratio of measures of transit mobility compared to cost than the no build alternative.

BRT means bus rapid transit.

Bus Rapid Transit refers to coordinated improvements in a transit

system's infrastructure, equipment, operations, and technology that give preferential treatment to buses on fixed guideways and urban roadways. The intention of Bus Rapid Transit is to reduce bus travel time, improve service reliability, increase the convenience of users, and ultimately, increase bus ridership.

Extension to existing fixed-guideway system means a project to extend an existing fixed guideway system.

FFGA means a Full Funding Grant Agreement.

Final Design is the final phase of project development, and includes (but is not limited to) the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents.

Fixed guideway system means a mass transportation facility which utilizes and occupies a separate right-of-way, or rail line, for the exclusive use of mass transportation and other high occupancy vehicles, or uses a fixed catenary system and a right of way usable by other forms of transportation. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, ferry boat service, and fixed-guideway facilities for buses (such as bus rapid transit) and other high occupancy vehicles. A *new fixed guideway system* means a newly-constructed fixed guideway system in a corridor or alignment where no such system exists.

FTA means the Federal Transit Administration.

Full Funding Grant Agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions.

Major transit investment means any project that involves the construction of a new fixed guideway system or extension of an existing fixed guideway system for use by mass transit vehicles.

NEPA process means those procedures necessary to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), at 23 CFR part 771; the NEPA process is completed when a Record of Decision (ROD) or Finding of No Significant Impact (FONSI) is issued.

New start means a new fixed guideway system, or an extension to an existing fixed guideway system.

Preliminary Engineering is the process by which the scope of the proposed project is finalized, estimates of project costs, benefits and impacts are refined, NEPA requirements are completed, project management plans and fleet management plans are further developed, and local funding commitments are put in place.

Secretary means the Secretary of Transportation.

TEA–21 means the Transportation Equity Act for the 21st Century.

§ 611.7 Relation to Planning and Project Development Processes

All new start projects proposed for funding assistance under 49 USC 5309 must emerge from the metropolitan and Statewide planning process, consistent with 23 CFR part 450. To be eligible for FTA capital investment funding, a proposed project must be based on the results of alternatives analysis and preliminary engineering.

(a) *Alternatives Analysis.* (1) To be eligible for FTA capital investment funding for a major fixed guideway transit project, local project sponsors must perform an alternatives analysis.

(2) The alternatives analysis develops information on the benefits, costs, and impacts of alternative strategies to address a transportation problem in a given corridor, leading to the adoption of a locally preferred alternative.

(3) The alternative strategies evaluated in an alternatives analysis must include a no-build alternative, a baseline alternative, and an appropriate number of build alternatives. Where project sponsors believe the no-build alternative fulfills the requirements for a baseline alternative, FTA will determine whether to require a separate baseline alternative on a case-by-case basis.

(4) The locally preferred alternative must be selected from among the evaluated alternative strategies and formally adopted and included in the metropolitan planning organization's financially-constrained long-range regional transportation plan.

(b) *Preliminary Engineering.* Consistent with 49 USC 5309(e)(6) and 5328(a)(2), FTA will approve/disapprove entry of a proposed project into preliminary engineering within 30 days of receipt of a formal request from the project sponsor(s).

(1) A proposed project can be considered for advancement into preliminary engineering only if:

(i) Alternatives analysis has been completed

(ii) The proposed project is adopted as the locally preferred alternative by the Metropolitan Planning Organization into its financially constrained metropolitan transportation plan;

(iii) Project sponsors have demonstrated adequate technical capability to carry out preliminary engineering for the proposed project; and

(iv) All other applicable Federal and FTA program requirements have been met.

(2) FTA's approval will be based on the results of its evaluation as described in §§ 611.9–611.13.

(3) At a minimum, a proposed project must receive an overall rating of ''recommended'' to be approved for entry into preliminary engineering.

(4) This part does not in any way revoke prior FTA approvals to enter preliminary engineering made prior to February 5, 2001.

(5) Projects approved to advance into preliminary engineering receive blanket pre-award authority to incur project costs for preliminary engineering activities prior to grant approval.

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for this project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(c) *Final Design.* Consistent with 49 USC 5309(e)(6) and 5328(a)(3), FTA will approve/disapprove entry of a proposed project into final design within 120 days of receipt of a formal request from the project sponsor(s).

(1) A proposed project can be considered for advancement into final design only if:

(i) The NEPA process has been completed;

(ii) Project sponsors have demonstrated adequate technical capability to carry out final design for the proposed project; and

(iii) All other applicable Federal and FTA program requirements have been met.

(2) FTA's approval will be based on the results of its evaluation as described in Parts §§ 611.9–611.13 of this Rule.

(3) At a minimum, a proposed project must receive an overall rating of ''recommended'' to be approved for entry into final design.

(4) Consistent with the Government Performance and Results Act of 1993, project sponsors seeking FFGAs shall submit a complete plan for collection and analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during development of the project.

(i) The plan shall provide for: Collection of ''before'' data on the current transit system; documentation of the ''predicted'' scope, service levels, capital costs, operating costs, and ridership of the project; collection of ''after'' data on the transit system two years after opening of the new start project; and analysis of the consistency

of ''predicted'' project characteristics with the ''after'' data.

(ii) The ''before'' data collection shall obtain information on transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics. The ''after'' data collection shall obtain analogous information on transit service levels and ridership patterns, plus information on the as-built scope and capital costs of the new start project.

(iii) The analysis of this information shall describe the impacts of the new start project on transit services and transit ridership, evaluate the consistency of ''predicted'' and actual project characteristics and performance, and identify sources of differences between ''predicted'' and actual outcomes.

(iv) For funding purposes, preparation of the plan for collection and analysis of data is an eligible part of the proposed project.

(5) Project sponsors shall collect data on the current system, according to the plan required under § 611.7(c)(4) as approved by FTA, prior to the beginning of construction of the proposed new start. Collection of this data is an eligible part of the proposed project for funding purposes.

(6) This part does not in any way revoke prior FTA approvals to enter final design that were made prior to February 5, 2001.

(7) Projects approved to advance into final design receive blanket pre-award authority to incur project costs for final design activities prior to grant approval.

(i) This pre-award authority does not extend to right of way acquisition or construction, nor does it constitute a commitment by FTA that future Federal funds will be approved for this project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(d) *Full funding grant agreements.* (1) FTA will determine whether to execute an FFGA based on:

(i) The evaluations and ratings established by this rule;

(ii) The technical capability of project sponsors to complete the proposed new starts project; and

(iii) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed new starts project.

(2) An FFGA shall not be executed for a project that is not authorized for final design and construction by Federal law.

(3) FFGAs will be executed only for those projects which:

(i) Are rated as ''recommended'' or ''highly recommended;''

(ii) Have completed the appropriate steps in the project development process;

(iii) Meet all applicable Federal and FTA program requirements; and

(iv) Are ready to utilize Federal new starts funds, consistent with available program authorization.

(4) In any instance in which FTA decides to provide financial assistance under section 5309 for construction of a new start project, FTA will negotiate an FFGA with the grantee during final design of that project. Pursuant to the terms and conditions of the FFGA:

(i) A maximum level of Federal financial contribution under the section 5309 new starts program will be fixed;

(ii) The grantee will be required to complete construction of the project, as defined, to the point of initiation of revenue operations, and to absorb any additional costs incurred or necessitated;

(iii) FTA and the grantee will establish a schedule for anticipating Federal contributions during the final design and construction period; and

(iv) Specific annual contributions under the FFGA will be subject to the availability of budget authority and the ability of the grantee to use the funds effectively.

(5) The total amount of Federal obligations under Full Funding Grant Agreements and potential obligations under Letters of Intent will not exceed the amount authorized for new starts under 49 U.S.C. § 5309.

(6) FTA may also make a ''contingent commitment,'' which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g), 5338(b), and 5338(h).

(7) Consistent with the Government Performance and Results Act of 1993 (GPRA), the FFGA will require implementation of the data collection plan prepared in accordance with § 611.7(c)(4):

(i) Prior to the beginning of construction activities the grantee shall collect the ''before'' data on the existing system, if such data has not already been collected as part of final design, and document the predicted characteristics and performance of the project.

(ii) Two years after the project opens for revenue service, the grantee shall collect the ''after'' data on the transit system and the new start project, determine the impacts of the project, analyze the consistency of the ''predicted'' performance of the project with the ''after'' data, and report the findings and supporting data to FTA.

(iii) For funding purposes, collection of the ''before'' data, collection of the ''after'' data, and the development and reporting of findings are eligible parts of the proposed project.

(8) This part does not in any way alter, revoke, or require re-evaluation of existing FFGAs that were issued prior to February 5, 2001.

§ 611.9 Project justification criteria for grants and loans for fixed guideway systems

In order to approve a grant or loan for a proposed new starts project under 49 U.S.C. 5309, and to approve entry into preliminary engineering and final design as required by section 5309(e)(6), FTA must find that the proposed project is justified as described in section 5309(e)(1)(B).

(a) To make the statutory evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through preliminary engineering and final design.

(1) The method used to make this determination will be a multiple measure approach in which the merits of candidate projects will be evaluated in terms of each of the criteria specified by this section.

(2) The measures for these criteria are specified in Appendix A to this rule.

(3) The measures will be applied to the project as it has been proposed to FTA for new starts funding under 49 U.S.C. 5309.

(4) The ratings for each of the criteria will be expressed in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''low-medium,'' or ''low.''

(b) The criteria are as follows:

(1) Mobility Improvements.

(2) Environmental Benefits.

(3) Operating Efficiencies.

(4) Transportation System User Benefits (Cost-Effectiveness).

(5) Existing land use, transit supportive land use policies, and future patterns.

(6) Other factors. Additional factors, including but not limited to:

(i) The degree to which the programs and policies (e.g., parking policies, etc.) are in place as assumed in the forecasts,

(ii) Project management capability, including the technical capability of the grant recipient to construct the project, and

(iii) Additional factors relevant to local and national priorities and relevant to the success of the project.

(c) In evaluating proposed new starts projects under these criteria:

(1) As a candidate project proceeds through preliminary engineering and

final design, a greater degree of certainty is expected with respect to the scope of the project and a greater level of commitment is expected with respect to land use.

(2) For the criteria under § 611.9(b)(1)–(4), the proposed new start will be compared to the baseline alternative.

(d) In evaluating proposed new starts projects under these criteria, the following factors shall be considered:

(1) The direct and indirect costs of relevant alternatives;

(2) Factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed, and recognize reductions in local infrastructure costs achieved through compact land use development;

(3) Existing land use, mass transportation supportive land use policies, and future patterns;

(4) The degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;

(5) Population density and current transit ridership in the corridor;

(6) The technical capability of the grant recipient to construct the project;

(7) Differences in local land, construction, and operating costs; and

(8) Other factors as appropriate.

(e) FTA may amend the measures for these criteria, pending the results of ongoing studies regarding transit benefit evaluation methods.

(f) The individual ratings for each of the criteria described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''low-medium,'' or ''low'' for project justification. ''Other factors'' will be considered as appropriate.

§ 611.11 Local financial commitment criteria.

In order to approve a grant or loan under 49 U.S.C. 5309, FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by section 5309(e)(1)(C). The local financial commitment to a proposed project will be evaluated according to the following measures:

(a) The proposed share of project capital costs to be met using funds from sources other than the section 5309 new starts program, including both the non-Federal match required by Federal law and any additional capital funding (''overmatch''), and the degree to which planning and preliminary engineering activities have been carried out without funding from the section 5309 new starts program;

(b) The stability and reliability of the proposed capital financing plan for the new starts project; and

(c) The stability and reliability of the proposed operating financing plan to fund operation of the entire transit system as planned over a 20-year planning horizon.

(d) For each proposed project, ratings for paragraphs (b) and (c) of this section will be reported in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''low-medium,'' or ''low.'' For paragraph (a) of this section, the percentage of Federal funding sought from 49 U.S.C. § 5309 will be reported.

(e) The summary ratings for each measure described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''low-medium,'' or ''low'' for local financial commitment.

§ 611.13 Overall project ratings.

(a) The summary ratings developed for project justification local financial commitment (§ § 611.9 and 611.11) will form the basis for the overall rating for each project.

(b) FTA will assign overall ratings of ''highly recommended,'' ''recommended,'' and ''not recommended,'' as required by 49 U.S.C. 5309(e)(6), to each proposed project.

(1) These ratings will indicate the overall merit of a proposed new starts project at the time of evaluation.

(2) Ratings for individual projects will be updated annually for purposes of the annual report on funding levels and allocations of funds required by section 5309(o)(1), and as required for FTA approvals to enter into preliminary engineering, final design, or FFGAs.

(c) These ratings will be used to:

(1) approve advancement of a proposed project into preliminary engineering and final design;

(2) Approve projects for FFGAs;

(3) Support annual funding recommendations to Congress in the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(o)(1); and

(4) For purposes of the supplemental report on new starts, as required under section 5309(o)(2).

(d) FTA will assign overall ratings for proposed new starts projects based on the following conditions:

(1) Projects will be rated as ''recommended'' if they receive a summary rating of at least ''medium'' for both project justification (§ 611.9) and local financial commitment (§ 611.11);

(2) Projects will be rated as ''highly recommended'' if they receive a summary rating higher than ''medium'' for both local financial commitment and project justification.

(3) Projects will be rated as ''not recommended'' if they do not receive a summary rating of at least ''medium'' for both project justification and local financial commitment.

Appendix A to Part 611—Description of Measures Used for Project Evaluation.

Project Justification

FTA will use several measures to evaluate candidate new starts projects according to the criteria established by 49 U.S.C. 5309(e)(1)(B). These measures have been developed according to the considerations identified at 49 U.S.C. 5309(e)(3) (''Project Justification''), consistent with Executive Order 12893. From time to time, FTA has published technical guidance on the application of these measures, and the agency expects it will continue to do so. Moreover, FTA may well choose to amend these measures, pending the results of ongoing studies regarding transit benefit evaluation methods. The first four criteria listed below assess the benefits of a proposed new start project by comparing the project to the baseline alternative. Therefore, the baseline alternative must be defined so that comparisons with the new start project isolate the costs and benefits of the major transit investment. At a minimum, the baseline alternative must include in the project corridor all reasonable cost-effective transit improvements short of investment in the new start project. Depending on the circumstances and through prior agreement with FTA, the baseline alternative can be defined appropriately in one of three ways. First, where the adopted financially constrained regional transportation plan includes within the corridor all reasonable cost-effective transit improvements short of the new start project, a no-build alternative that includes those improvements may serve as the baseline. Second, where additional cost-effective transit improvements can be made beyond those provided by the adopted plan, the baseline will add those cost-effective transit improvements. Third, where the proposed new start project is part of a multimodal alternative that includes major highway components, the baseline alternative will be the preferred multimodal alternative without the new start project and associated transit services. Prior to submittal of a request to enter preliminary engineering for the new start project, grantees must obtain FTA approval of the definition of the baseline alternative. Consistent with the requirement that differences between the new start project and the baseline alternative measure only the benefits and costs of the project itself, planning factors external to the new start project and its supporting bus service must be the same for both the baseline and new start project alternatives. Consequently, the highway and transit networks defined for the analysis must be the same outside the corridor for which the new start project is proposed. Further, policies affecting travel demand and travel costs, such as land use, transit fares and parking costs,

must be applied consistently to both the baseline alternative and the new start project alternative. The fifth criterion, ''existing land use, transit supportive land use policies, and future patterns,'' reflects the importance of transit-supportive local land use and related conditions and policies as an indicator of ultimate project success.

(a) Mobility Improvements.

(1) The aggregate travel time savings in the forecast year anticipated from the new start project compared to the baseline alternative. This measure sums the travel time savings accruing to travelers projected to use transit in the baseline alternative, travelers projected to shift to transit because of the new start project, and non-transit users in the new start project who would benefit from reduced traffic congestion.

(i) After September 1, 2001, FTA will employ a revised measure of travel benefits accruing to travelers.

(ii) The revised measure will be based on a multi-modal measure of perceived travel times faced by all users of the transportation system.

(2) The absolute number of existing low income households located within ½-mile of boarding points associated with the proposed system increment.

(3) The absolute number of existing jobs within ½-mile of boarding points associated with the proposed system increment.

(b) Environmental Benefits.

(1) The forecast change in criteria pollutant emissions and in greenhouse gas emissions, ascribable to the proposed new investment, calculated in terms of annual tons for each criteria pollutant or gas (forecast year), compared to the baseline alternative;

(2) The forecast net change per year (forecast year) in the regional consumption of energy, ascribable to the proposed new investment, expressed in British Thermal Units (BTU), compared to the baseline alternative; and

(3) Current Environmental Protection Agency designations for the region's compliance with National Ambient Air Quality Standards.

(c) Operating Efficiencies. The forecast change in operating cost per passenger-mile (forecast year), for the entire transit system. The new start will be compared to the baseline alternative.

(d) Transportation System User Benefits (Cost-Effectiveness).

(1) The cost effectiveness of a proposed project shall be evaluated according to a measure of transportation system user benefits, based on a multimodal measure of perceived travel times faced by all users of the transportation system, for the forecast year, divided by the incremental cost of the proposed project. Incremental costs and benefits will be calculated as the differences between the proposed new start and the baseline alternative.

(2) Until the effective date of the transportation system user benefits measure of cost effectiveness, cost effectiveness will be computed as the incremental costs of the proposed project divided by its incremental transit ridership, as compared to the baseline alternative.

(i) Costs include the forecast annualized capital and annual operating costs of the entire transit system.

(ii) Ridership includes forecast total annual ridership on the entire transit system, excluding transfers.

(e) Existing land use, transit supportive land use policies, and future patterns. Existing land use, transit-supportive land use policies, and future patterns shall be rated by evaluating existing conditions in the corridor and the degree to which local land use policies are likely to foster transit supportive land use, measured in terms of the kinds of policies in place, and the commitment to these policies. The following factors will form the basis for this evaluation:

(1) Existing land use;

(2) Impact of proposed new starts project on land use;

(3) Growth-management policies;

(4) Transit-supportive corridor policies;

(5) Supportive zoning regulations near transit stations;

(6) Tools to implement land use policies;

(7) The performance of land use policies; and

(8) Existing and planned pedestrian facilities, including access for persons with disabilities.

(f) Other factors. Other factors that will be considered when evaluating projects for funding commitments include, but are not limited to:

(1) Multimodal emphasis of the locally preferred investment strategy, including the proposed new start as one element;

(2) Environmental justice considerations and equity issues,

(3) Opportunities for increased access to employment for low income persons, and Welfare-to-Work initiatives;

(4) Livable Communities initiatives and local economic activities;

(5) Consideration of alternative land use development scenarios in local evaluation and decision making for the locally preferred transit investment decision;

(6) Consideration of innovative financing, procurement, and construction techniques, including design-build turnkey applications; and

(7) Additional factors relevant to local and national priorities and to the success of the project, such as Empowerment Zones, Brownfields, and FTA's Bus Rapid Transit Demonstration Program.

Local Financial Commitment

FTA will use the following measures to evaluate the local financial commitment to a proposed project:

(a) The proposed share of project capital costs to be met using funds from sources other than the 49 U.S.C. 5309 new starts program, including both the local match required by Federal law and any additional capital funding (''overmatch''). Consideration will be given to:

(i) The use of innovative financing techniques, as described in the May 9, 1995, **Federal Register** notice on *FTA's Innovative Financing Initiative* (60 FR 24682);

(ii) The use of ''flexible funds'' as provided under the CMAQ and STP programs;

(iii) The degree to which alternatives analysis and preliminary engineering activities were carried out without funding from the § 5309 new starts program; and

(iv) The actual percentage of the cost of recently-completed or simultaneously undertaken fixed guideway systems and extensions that are related to the proposed project under review, from sources other than the section 5309 new starts program (FTA's intent is to recognize that a region's local financial commitment to fixed guideway systems and extensions may not be limited to a single project).

(b) The stability and reliability of the proposed capital financing plan, according to:

(i) The stability, reliability, and level of commitment of each proposed source of local match, including inter-governmental grants, tax sources, and debt obligations, with an emphasis on availability within the project development timetable;

(ii) Whether adequate provisions have been made to cover unanticipated cost overruns and funding shortfalls; and

(iii) Whether adequate provisions have been made to fund the capital needs of the entire transit system as planned, including key station plans as required under 49 CFR 37.47 and 37.51, over a 20-year planning horizon period.

(c) The stability and reliability of the proposed operating financing plan to fund operation of the entire transit system as planned over a 20-year planning horizon.

Issued: November 29, 2000.

Nuria I. Fernandez,

Acting Administrator.

[FR Doc. 00–30921 Filed 12–6–00; 8:45 am]

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Federal Register

Thursday,
December 7, 2000

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Temporary Approval of Tin Shot as Nontoxic for Hunting Waterfowl and Coots During the 2000–2001 Season; Final Rule

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN: 1018–AH67

Migratory Bird Hunting; Temporary Approval of Tin Shot as Nontoxic for Hunting Waterfowl and Coots During the 2000–2001 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) amends 50 CFR 20.21(j) to grant temporary approval of tin shot as nontoxic for hunting waterfowl and coots during the 2000–2001 season only. Acute toxicity studies revealed no adverse effects over a 30-day period on mallards (*Anas platyrhynchos*) dosed with tin shot. Reproductive/chronic toxicity testing over a 150-day period indicated that tin administered to adult mallards did not adversely affect them or the offspring they produced. The tin shot application was submitted by the International Tin Research Institute, Ltd. (ITRI) of Uxbridge, Middlesex, England.

DATES: This rule takes effect on December 7, 2000.

ADDRESSES: Copies of the Environmental Assessment are available by writing to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Suite 634, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act)(16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

The purpose of this rule is to allow the hunting public to temporarily use tin shot for hunting waterfowl and coots during the 2000–2001 hunting season only. Accordingly, we amend 50 CFR 20.21, which describes illegal hunting methods for migratory birds. Paragraph (j) of § 20.21 pertains to prohibited types of shot. We amend § 20.21(j) to allow temporary use of tin shot (99.9 percent tin, with <1 percent residual lead) as nontoxic shot for waterfowl and coot hunting during the 2000–2001 hunting season only.

Since the mid-1970s, we have sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel, bismuth-tin, tungsten-iron, tungsten-polymer, and tungsten-matrix shot are approved as nontoxic. We previously granted temporary approval for tin shot during the 1999–2000 hunting season (August 19, 1999; 64 FR 45400). Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000). We believe that compliance will continue to increase with the approval and availability of other nontoxic shot types.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. This shot material has a density of approximately 7.3 g/cm^3, and is 99.9 percent tin, with a low level of iron pickup due to the steel production equipment. The tin shot application from ITRI contains a description of the shot, a toxicological report (Thomas 1997), results of a 30-day toxicity study (Wildlife International, Ltd. 1998), and results of a 150-day reproductive/chronic toxicity study (Gallagher *et al.* 2000). On August 19, 1999 (64 FR 45400) we published a detailed literature review on toxicity, environmental fate, and known effect of tin on birds, as well as results from ITRI's 30-day toxicity testing of tin shot. On September 25, 2000 (65 FR 57586) we published results from ITRI's reproductive/chronic toxicity study which revealed no adverse effects of tin shot on adult mallards, or the offspring they produced.

Nontoxic Shot Approval

The nontoxic shot approval process contains a tiered review system and outlines three conditions for approval of shot types. The first condition for nontoxic shot approval is toxicity testing. Based on the results of the toxicological report and the toxicity tests discussed above, we conclude that tin shot does not pose a significant danger to migratory birds or other wildlife.

The second condition for approval is testing for residual lead levels. Any shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. We have determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and incorporated this requirement in the new approval process. ITRI has documented that tin shot meets this requirement.

The third condition for approval involves law enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), we indicated our position that a noninvasive field detection device to distinguish lead from other shot types was an important component of the nontoxic shot approval process. At that time, we stated that final approval of bismuth-tin shot would be contingent upon the development and availability of a noninvasive field detection device (60 FR 43315). We incorporated a requirement for a noninvasive field detection device in the revised nontoxic shot approval process published on December 1, 1997 (62 FR 63608); 50 CFR 20.134(b)(6). A field detection method to distinguish tin shot from lead currently is being developed by ITRI. Granting temporary approval for tin shot during the 2000–2001 hunting season will facilitate completion of development of such a device. However, we will not consider either additional temporary approvals, or final approval, of tin shot beyond the 2000–2001 season until a reliable and acceptable field detection method is developed and is readily available to law enforcement personnel.

As stated previously, this rule amends 50 CFR 20.21(j) by temporarily approving tin shot as nontoxic for hunting waterfowl and coots during the 2000–2001 hunting season only. It is based on the toxicological report, acute toxicity study, and the reproductive/chronic toxicity study submitted by ITRI. Results of these studies indicate the absence of any deleterious effects of tin shot when ingested by captive-reared mallards.

In the amendatory language of the proposed rule published on September 25, 2000 (65 FR 57588), we incorrectly stated the chemical composition of tungsten-iron shot as 55 parts tungsten and 45 parts iron. The correct composition is 40 parts tungsten and 60 parts iron.

Public Comments and Responses

The September 25, 2000, proposed rule published in the **Federal Register** (65 FR 57586) invited public comments from interested parties. We indicated that the public comment period had been shortened to 30 days to expedite the availability of tin shot to hunters during the current hunting season (65 FR 57587). The **DATES** section of the

proposed rule incorrectly stated that public comments should be submitted no later than November 24, 2000, instead of October 24, 2000. On October 23, 2000, we published a notice in the **Federal Register** to correct the closing date for comments (65 FR 63225). We received three comments during the comment period.

ITRI expressed their appreciation for extension of temporary approval of tin shot, which will facilitate development of a field detection device. The Wisconsin Department of Natural Resources did not support granting temporary approval of tin shot at this time, due to the lack of a noninvasive field detection device to distinguish tin from lead shot. A private individual inquired whether or not ITRI manufactures tin shot, and whether the Service possessed any specific tin shot which it proposes to approve as nontoxic. The individual also opposed the approval of tin shot due to the low density of tin; which the individual believes will increase the incidence of crippling of waterfowl. Finally, the individual recommended that Service revise its nontoxic shot approval process to incorporate a lethality component.

Service Response: We understand the concern of wildlife agencies regarding the lack of a noninvasive field detection device. ITRI is currently developing such a device, and granting temporary approval of tin shot for an additional year will facilitate completion of such development. However, tin shot shells currently on the market clearly are labeled as such, which will aid in field detection. We reiterate that we will not consider either additional temporary approvals, or final approval, of tin shot beyond the 2000–2001 season until a reliable and acceptable field detection method is developed and is readily available to law enforcement personnel.

With regard to whether or not ITRI manufactures tin shot, there is no requirement for an applicant for nontoxic shot approval to physically manufacture the shot themselves. ITRI submitted a five pound sample of the candidate shot with its original application. Because tin shot is 99.9 percent tin, it is essentially a generic tin shot and its nontoxic characteristic is not dependent on the manufacturer. With regard to the ballistic performance of tin shot, the density of tin shot (approximately 7.3 g/cm^3) is only slightly less than that of approved steel shot (7.9 g/cm^3). Previously, we reviewed the ballistic performance of steel shot versus lead shot, and concluded that steel shot was suitable for hunting waterfowl (U.S. Fish and Wildlife Service 1976, 1986). As with any shot type, we recommend that hunters restrict shooting to shorter distances to reduce crippling and maximize the number of waterfowl that are retrieved. We solicited public input on our proposed revision to the nontoxic shot approval process on January 26, 1996 (61 FR 2470). We received no public comments requesting that a lethality component be incorporated in the revised approval process. Finally, we note that tin shot has already been approved as nontoxic for hunting waterfowl in Canada.

References

Anderson, W.L., S.P. Havera, and B.W. Zercher. 2000. Ingestion of lead and nontoxic shotgun pellets by ducks in the Mississippi Flyway. J. Wildl. Manage. 64:848–857.

Gallagher, S.P., J.B. Beavers, R. Van Hoven, M. Jaber. 2000. Pure tin shot: A chronic exposure study with the mallard including reproductive parameters. Wildlife International, Ltd. Project No. 476–102. Easton, Maryland. 322pp.

Thomas, V.G. 1997. Application for approval of tin shot as non-toxic for the hunting of migratory birds. 26 pp.

U.S. Fish and Wildlife Service. 1976. Final Environmental Impact Statement: Proposed use of steel shot for hunting waterfowl in the United States. Department of the Interior. Washington, DC. 276pp.

U.S. Fish and Wildlife Service. 1986. Final Supplemental Environmental Impact Statement: Use of lead shot for hunting migratory birds in the United States. Department of the Interior. Washington, DC. 549pp.

Wildlife International, Ltd. 1998. Tin shot: An oral toxicity study with the mallard. Project No. 476–101. 158 pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared an Environmental Assessment (EA) for temporary approval of tin shot in October, 2000. Based on review and evaluation of the information contained in the EA, we have determined that amending 50 CFR 20.21(j) to provide temporary approval of tin shot as nontoxic for waterfowl and coot hunting during the 2000–01 season would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on this action is not required. The EA is available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' We have completed a Section 7 consultation under the ESA for this rule. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. This rule approves an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this rule would provide one shot type in addition to the existing five that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others. This rule has not been reviewed by the Office of Management and Budget (OMB) review under Executive Order 12866.

Executive Order 12866

This rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. OMB makes the final determination under E.O. 12866. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the

SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no information collection requirements. However, we do have OMB approval (1018–0067; expires 10/31/2003) for information collection relating to what manufacturers of shot are required to provide to us for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We, in promulgating this rule, have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Effective Date

Under the APA (5 U.S.C. 551–553) our normal practice is to publish policies with a 30-day delay in effective date. But in this case, we are using the ''good cause'' exemption under 5 U.S.C. 553(d)(3) to make this policy effective upon publication for the following reasons: This rule relieves a restriction and, in addition, it is not in the public interest to delay the effective date of this rule. It is in the best interest of small retailers who have stocked tin shot for the current season. The Services believes another nontoxic shot option likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we amend part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising paragraph (j) introductory text and adding paragraph (j)(1) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tin (99.9 percent tin with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that this restriction applies only to the taking of Anatidae (ducks, geese, (including brant) and swans), coots (*Fulica americana*) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones, and further provided that:

(1) Tin shot (99.9 percent tin with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 2000–2001 hunting season only.

(2) [Reserved]

Dated: November 24, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–30957 Filed 12–06–00; 8:45 am]

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Federal Register

Thursday,

December 7, 2000

Part VIII

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107

Hazardous Materials: Temporary Reduction of Registration Fees; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–00–8439 (HM–208D)]

RIN 2137–AD53

Hazardous Materials: Temporary Reduction of Registration Fees

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Because there is an unexpended balance in the Hazardous Materials Emergency Preparedness grants fund, RSPA proposes to temporarily lower the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials. RSPA also proposes to require all not-for-profit organizations to pay the same registration fee as a small business and to refer to the size standards in the North American Industry Classification System (NAICS) as the criteria for a small business.

DATES: Comments must be received by February 2, 2001.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number, RSPA–00–8439 (HM–208D) at the beginning of your comments and submit two copies. If you wish to receive confirmation of receipt of your comments, include a self-addressed stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' to obtain instructions for filing the document electronically.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the U.S. DOT at the above address. You can view public dockets between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You can also view comments on-line at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Proposal

Since 1992, RSPA has conducted a national registration program for persons engaged in the offering for transportation or transporting certain categories and quantities of hazardous materials in intrastate, interstate, or foreign commerce. This program is carried out under the mandate in 49 U.S.C. 5108 and the authority delegated to RSPA at 49 CFR 1.53(b)(1). The purposes of the registration program are to (1) gather information about the transportation of hazardous material and (2) fund the Hazardous Materials Emergency Preparedness (HMEP) grants program which supports hazardous material emergency response planning and training activities by States, local governments, and Indian tribes and related activities. See 49 U.S.C. 5018(b), 5116.

Until 2000, the annual registration fee was set at the minimum level of $250 provided in the statute (plus a processing fee of $50), and the requirement to register applied only to those persons offering or transporting the categories and quantities for which registration was required by the law. 49 U.S.C. 5108(g)(2)(A). In each of the eight registration years from 1992–1993 through 1999–2000, RSPA received approximately 27,000 registration statements and an average of $6.8 million to support the HMEP grants program, or less than 50% of the total $14.3 million intended by Congress for training and planning grants and grant-related activities. See the discussion in the final rule published February 14, 2000 in Docket No. HM–208C (RSPA–99–5137), 65 FR 7297, 7299. In order to increase the funds collected from the registration program for the registration years beginning with 2000–2001, in the February 14, 2000 final rule, RSPA (1) expanded the requirement to register to all persons who offer for transportation or transport hazardous materials required to be placarded (with a limited exception for farmers), and (2) adopted a two-tiered fee schedule of $275 (plus a $25 processing fee) for persons meeting criteria of the U.S. Small Business Administration (SBA) for a ''small business,'' and $1,975 (plus a $25 processing fee) for all other registrants. RSPA also allowed registration for one, two or three years under a single registration statement. 65 FR at 7309–10.

RSPA estimated that, by requiring persons to register if they offer for transportation or transport hazardous materials required to be placarded, the total number of registrants would increase to a number in the range of 42,000 to 45,000. 65 FR at 7308. Based on the registrations to date, RSPA now estimates that a total of approximately 40,000 persons will register for the 2000–2001 registration year, and that the number of registrants may increase slightly in the future. Based on a careful review of census data concerning establishments identified by Standard Industrial Classification (SIC) Codes corresponding to operations involving the likely manufacture, distribution, or sale (wholesale and retail) of hazardous materials, RSPA estimated that about 1,500 (3%) of the shippers, carriers, and offerors of hazardous materials would not qualify as a SBA small business. 65 FR at 7304. However, to date, approximately 5,800 (or more than 15%) of the registrants for the 2000–2001 registration year have paid the higher $2,000 fee applicable to persons who are not small businesses.

As a result of the much greater than anticipated number of persons paying the higher registration fee applicable to larger businesses, RSPA has collected more than $21 million in registration fees. (This total includes registration fees received since October 1, 1999 for prior registration years, but it does not include the fees paid for future registration years, 2001–2002 and 2002–2003.) In addition, another $1.5 million is available in the account established under 49 U.S.C. 5116(i) to fund the HMEP grants and related activities primarily from funds not used by States. Because the current annual grants program obligations are limited to the $14.3 million designated by Congress, this leaves a surplus (or unexpended balance) of approximately $8.5 million in the account established under section 5116(i). The law requires DOT to adjust the amount of the annual registration fee ''to reflect any unexpended balance in the account established under section 5116(i),'' but it does not require refunds if there is a surplus in that account. 49 U.S.C. 5116(g)(2)(B).

For the reasons discussed below, RSPA is proposing to lower the registration fee for all registrants for the next six registration years (2001–2002 through 2006–2007) in order to eliminate the unexpended balance (or surplus) in the HMEP grants fund. During this period, small businesses and non-profit organizations (regardless of their size) would pay $250 (plus a $25 processing fee), and all other persons required to register would pay $475

(plus a $25 processing fee). Any person who has already registered for future registration years (2001–2002 and 2002–2003) would receive a refund of the excess paid for those future registration years. RSPA is also proposing to amend its reference to the SBA small business criteria to reflect SBA's recent replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System (NAICS). In addition, RSPA proposes to allow payment by additional credit cards than previously authorized.

II. Temporarily Reducing the Registration Fees

As explained more fully in a preliminary regulatory evaluation placed in the public docket, RSPA has considered the following alternatives for temporarily adjusting the registration fees in accordance with 49 U.S.C. 5108(g)(2)(B):

(1) Temporarily reduce the registration fee for all persons required to register.

(2) Temporarily reduce the registration fee for those persons who do not meet the SBA's criteria for a small business.

(3) Temporarily reduce the fee to eliminate the surplus and establish a permanent fee for future years.

(4) Revise the registration criteria by temporarily eliminating the requirement that all persons who offer for transportation or transport hazardous materials required to be placarded be registered.

(5) Provide a refund or a credit for future registrations.

(6) Temporarily revise the fee structure so that everyone pays the same fee.

We invite comments from interested parties on these alternatives, the most appropriate time period, and other possible methods for eliminating the unexpended balance in the HMEP grants fund. All comments should be as detailed as possible with estimates of the total amount that would be collected based on the number of registrants and the registration fee.

In the final rule in Docket No. HM–208C, we concluded that the registration program should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor that reflects the differences between the risk imposed on the public by the business activities of large and small businesses; (3) ensure the adequacy of funding for the HMEP grants program; and (4) be consistent with the law. See 65 FR at 7303. We found that the most appropriate way to meet these objectives was to expand the category of persons required to register to include all persons who offer for transportation or transport hazardous materials that require placarding (with a limited exception for farmers) and to adopt a two-tiered fee schedule under which persons meeting the SBA criteria for defining a small business would pay a lower fee than larger businesses.

For all the reasons discussed in the February 14, 2000 final rule, we still believe that these findings and conclusions are justified and should be followed in adjusting registration fees to reflect the unexpended surplus in the HMEP grants fund. All persons who offer or transport in commerce a quantity of hazardous materials that requires placarding should be required to register and pay a registration fee. It would not be appropriate to revert to a ''flat'' fee for all registrants, unless the number of registrants increases to a level that $14.3 million would be collected by charging all registrants the minimum $250 fee. So long as there is a significant unexpended balance in the HMEP grants fund, any person that is a small business should pay the minimum $250 fee. We have also concluded that all non-profit organizations, regardless of their size, should pay the same lower registration fee as paid by those for profit businesses meeting the SBA criteria for a small business, as explained in Section III. The SBA size criteria are the most appropriate for determining a small business and, as discussed in Section IV, we propose to replace our reference to SIC codes with a reference to NAICS because SBA recently changed its regulations in this regard.

With a two-tier fee system and approximately 40,000 registrants, it will take more than one year to eliminate the unexpended balance in the HMEP fund. Stretching this process over several years also will give RSPA better information on how many persons are required to register and whether a substantial number of registrants have paid the larger (non-small business) fee by mistake. Therefore, RSPA is proposing to eliminate the unexpended balance over six years, by reducing the registration fees for all registrants by amounts that will enable RSPA to collect approximately $12.8 million in registration fees in each of the next six registration years. (This assumes that RSPA will continue to collect $1.3 million per year in prior year registrations.) In other words, registration fees would be set at amounts that would produce an annual deficit of approximately $1.5 million from the $14.3 million authorized for HMEP grants and related purposes (*i.e.,* $14.3 million − $1.5 million = $12.8 million in annual collections). This would be accomplished by lowering the annual registration fee, for six years, to:

—$250 (plus a $25 processing fee) for persons who meet the definition of a small business or a not-for-profit entity, and

—$475 (plus a $25 processing fee) for all other persons who are required to register.

In response to requests from industry, in the February 14, 2000 final rule in Docket No. HM–208C, RSPA provided that a person could register for up to three years in one registration statement. 49 CFR 107.612(c), 65 FR at 7309–10. To date, approximately 5,000 persons have elected to register for multiple years. If RSPA lowers the registration fee for the 2001–2002 and 2002–2003 registration years, each person who has already registered for one or both of those years at the higher fee level will receive a refund of the difference.

Though RSPA is temporarily lowering the registration fees for six years, we realize that a permanent change may be required after the surplus is expended. RSPA is not making a permanent change to the registration fees at this time because of uncertainty in the final registration numbers in terms of total registrants and the percentage of large and small businesses. Instead, within three years, RSPA will reevaluate the registration fee levels to determine what changes are needed in future years based on any remaining surplus, changes in the number of registrants, the number of registrants that are not a small business, and other relevant factors.

III. Not-for-Profit Organizations

The SBA criteria for small business size standards apply to business entities organized for profit. 13 CFR 121.105(a). Therefore, non-profit organizations do not technically qualify as a small business. RSPA decided for registration purposes to apply SBA size criteria for appropriate SIC Codes to non-profit organizations. However, nearly all of the non-profit organizations that are currently registered, which are mostly educational institutions and hospitals, exceed the SBA size standards for a small business. Because non-profit organizations generally are operated for educational, religious, charitable and other similar purposes, RSPA is interested in helping them to minimize their costs of operation. Accordingly, for registration year 2001–2002 and thereafter, RSPA is proposing to establish the fee level for a non-profit

organization at the same level as for a small business operated for a profit, *i.e.,* $250.00 (plus a $25 processing fee) for the next six registration years, and $275 (plus a $25 processing fee) thereafter. RSPA is proposing to define a not-for-profit organization as an organization exempt from taxation under 26 U.S.C. 501(a). RSPA is asking for comments on the appropriateness of this definition, in particular as to whether this definition is broad enough or there is a more appropriate definition that RSPA should adopt.

IV. Definition of a Small Business

In the February 14, 2000 final rule in Docket No. HM–208C, RSPA referenced SBA's size standards as they existed at that time, which were based on the SIC code system. At that time, RSPA noted that SBA had proposed to change from SIC codes to the NAICS, and we indicated that this change should not result in many instances in which an entity would lose its status as a small business. 65 FR at 7304.

On May 15, 2000, SBA published a final rule in the **Federal Register** that adopted a new table of small business size standards for industries as defined in NAICS. 65 FR 30836. SBA published a corrected table in the **Federal Register** on September 5, 2000, which became effective on October 1, 2000. 65 FR 53533. Our further review of the SIC codes and NAICS confirms our earlier conclusion that very few entities would lose their small business status; however, we invite comments on the effect of changing from SIC codes to NAICS. Accordingly, for registration year 2001–2002 and thereafter, RSPA is proposing to change the reference in 49 CFR 107.612 from the SIC code system to NAICS to correspond to the current SBA regulations.

A list of size criteria under NAICS is provided on the SBA Internet site at: http://www.sba.gov/size/NAICS-matched-with-size-stds-umbrella.htm.

A keyword search engine for NAICS is provided by the U.S. Census Bureau at its Internet site at: *http://www.census.gov/epcd/naics/framesrc.htm.*

Additional information on NAICS, including tables showing the correspondences between the two numbering systems is provided at: *http://www.census.gov/epcd/www/naics.html.*

Registrants unfamiliar with NAICS should find these sites useful in determining the appropriate code.

V. Petition from the Petroleum Marketers Association of America (PMAA)

On October 12, 2000 we received a Petroleum Marketers Association of America (PMAA) petition (P–1405) asking that intrastate marketers of petroleum and heating oil whose activities are within SIC codes 5171, 5172, and 5983 be excepted from the requirement to register and that the registration fee for all interstate carriers be reduced to the minimum $250. In accordance with 49 CFR 106.33(c), RSPA denies PMAA's petition.

In its petition, a copy of which is made part of this docket, PMAA stated that it continues to believe that a ''clear reading'' of the statute exempts intrastate carriers. PMAA states that ''commerce'' is defined as ''trade or transportation in the jurisdiction of the United States between a place in a State and a place outside of the State; or that affects trade or transportation between a place in a State and place outside of the State.'' (49 U.S.C. § 5102(1)(A)(B)). PMAA contends that, ''in this section, it seems Congress has defined ''commerce'' as interstate operations to which the fee applies.'' PMAA also states that the ''hazardous materials (hazmat) transportation program was designed to allow interstate carriers to travel between states without paying each state's hazmat fee and was designed to preempt state taxes.'' PMAA stated that RSPA will still be able to meet its HMEP grants funding levels if it maintains the two-tiered fee system and removes petroleum marketers from the registration program.

RSPA disagrees with PMAA's statements that Congress intended ''to include only interstate carriers in the hazardous materials fee program'' and that ''the overfunding resulting from this extension to small, local carriers of propane, diesel and heating oil ensured overfunding of the program.'' In the July 9, 1992 final rule in Docket No. HM–208, RSPA found that the registration provisions now set forth in 49 U.S.C. 5108(a)

> make no distinction between interstate and intrastate carriers and shippers of hazardous materials. Further, it would be illogical to presume that intrastate offerors and carriers are excepted from the registration program when they will be primary recipients of the enhanced emergency response capabilities derived from the national emergency response training and planning grant program for States and local governments. 57 FR at 30622.

Moreover, RSPA has received registration statements from only about 3,900 persons in the three SIC codes specified in PMAA's request. This represents less than $1.1 million in registration fees (not including the $25 processing fee), or a small fraction of the unexpended balance in the HMEP fund (assuming that all these persons are ''small, local carriers of propane, diesel and heating oil'' as characterized by PMAA). PMAA's separate suggestion that ''all interstate carriers'' should pay only the $250 minimum registration fee conflicts with RSPA's finding that the amount of the fee should not be the same for small and other than small businesses.

PMAA's statement that interstate carriers are somehow insulated from paying ''each state's hazmat fee'' or ''state income or other local taxes'' seems to ignore the fact that the registration program under 49 U.S.C. 5108 ''has no preemptive effect'' on the ability of ''States, local governments or Indian tribes to impose their own fees or registration or permit requirements on interstate, intrastate or foreign offerors or carriers of hazardous materials.'' 57 FR at 30626. Preemption of non-Federal hazardous material registration or permit requirements is governed by the criteria set forth in 49 U.S.C. 5125.

VI. Rulemaking Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule, if adopted, would not be considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This proposed rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). RSPA has prepared a preliminary regulatory evaluation which is available for review in the public docket.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). The registration requirements do not impair the ability of States, local governments, or Indian tribes to impose their own fees or registration or permit requirements on persons who offer or transport hazardous materials in commerce. RSPA encourages States, local governments, and Indian tribes to adopt and enforce requirements in the HMR and the Federal registration requirement, in order to enhance compliance with a nationally uniform set of regulations on the transportation of hazardous materials.

The consultation and funding requirements of Executive Order 13132 do not apply because this proposed rule would not adopt any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on State and local governments; or

(3) Preempts state law.

C. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities.

In the February 14, 2000 final rule in Docket No. HM–208C, RSPA certified that that final rule did affect a significant number of small entities, but that the economic impact on these small entities will not be significant. 65 FR at 7308–7309. This proposed rule affects the same small entities that Docket HM–208C did and, therefore, this proposed rule would affect a significant number of small entities. See 65 FR at 7307. Although this proposed rule is providing a $25 reduction in the combined annual fee that small businesses must pay, that reduction does not constitute a significant economic impact on a substantial number of small entities. Therefore, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not, if adopted, result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), reporting and recordkeeping requirements pertaining to the registration rule are specifically excepted from the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. In § 107.612, paragraph (b) is revised and new paragraphs (c) and (d) are added to read as follows:

§ 107.612 Amount of fee.

* * * * *

(b) *Registration year 2000–2001.* For the registration year 2000–2001, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 in effect prior to October 1, 2000 (see 13 CFR revised as of January 1, 1999), applicable to the standard industrial classification (SIC) code that describes that person's primary commercial activity, must pay an annual fee of $275 and the processing fee required by paragraph (b)(3) of this section.

(2) *Other than a small business.* Each person that does not meet the criteria specified in paragraph (b)(1) of this section must pay an annual fee of $1,975 and the processing fee required by paragraph (b)(3) of this section.

(3) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

* * * * *

(c) *Registration years 2001–2002 through 2006–2007.* For registration years 2001–2002, 2002–2003, 2003–2004, 2004–2005, 2005–2006, and 2006–2007, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 in effect on or after October 1, 2000, applicable to the North American Industry Classification System (NAICS) that describes that person's primary commercial activity, must pay an annual fee of $250 and the processing fee required by paragraph (c)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual fee of $250 and the processing fee required by paragraph (c)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or a not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (c)(1) or (c)(2) of this section must pay an annual fee of $475 and the processing fee required by paragraph (c)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(d) *Registration years 2007–2008 and following.* For each registration year beginning with 2007–2008, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 in effect on or after October 1, 2000, applicable to the North American Industry Classification System (NAICS) that describes that person's primary commercial activity, must pay an annual fee of $275 and the processing fee required by paragraph (d)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual fee of $275 and the processing fee required by paragraph (d)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (d)(1) or (d)(2) of this section must pay an annual fee of $1,975 and the processing fee required by paragraph (d)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

3. In § 107.616, paragraph (b) is revised to read as follows:

§ 107.616 Payment procedures.

* * * * *

(b) Payment must be made by certified check, cashier's check, personal check, or money order in U.S. funds and drawn on a U.S. bank, payable to the U.S. Department of Transportation and identified as payment for the ''Hazmat Registration Fee'' or by a credit card authorization completed and signed on the registration statement.

* * * * *

Issued in Washington, DC, on December 1, 2000, under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–31044 Filed 12–6–00; 8:45 am]

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Federal Register

Thursday,
December 7, 2000

Part IX

Nuclear Regulatory Commission

10 CFR Part 72

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision; Final Rule and Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG57

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International (NAC) Universal Storage System (NAC–UMS) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to the Certificate of Compliance (CoC). This amendment will allow holders of power reactor operating licenses as general licensees to store PWR design basis fuel assemblies in accordance with revised technical specifications and Maine Yankee site-specific spent fuel in the NAC–UMS. The changes for Amendment No. 1 to the NAC–UMS CoC include: changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); editorial clarifications to the technical specifications (TS); and deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug.

DATES: The final rule is effective February 20, 2001, unless significant adverse comments are received by January 8, 2001. If the rule is withdrawn timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

All publicly available documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may also be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC's Public Document Room Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to pdr@nrc.gov.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML003754655.

FOR FURTHER INFORMATION CONTACT: Keith McDaniel, telephone (301) 415–5252, e-mail, KKM@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on October 19, 2000 (65 FR 62581) that approved the NAC–UMS cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (1015).

Discussion

On July 16, 1999, the certificate holder (NAC) submitted an application to the NRC to amend CoC No. 1015 to allow holders of power reactor operating licenses to store spent fuel in the cask under revised conditions. Amendment No. 1 includes: (1) changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; (2) changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; (3) authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); (4) editorial clarifications to the technical specifications; and (5) deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug. No other changes to the NAC–UMS cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request which is summarized in the paragraph below.

The NAC–UMS cask was evaluated against the regulatory standards in 10 CFR Part 72. NAC demonstrated the structural adequacy of the Maine Yankee site-specific fuels (MYSSF) that are intact (with and without damaged assembly hardware), consolidated, damaged, and high-burnup. The thermal evaluation verified that the cladding (including high-burnup) and cask component temperatures were acceptable for all authorized spent fuel contents and configurations under normal, off-normal and accident conditions. The shielding evaluation determined that the site-specific spent fuels and various configurations, including fuel assembly hardware, are either bounded by the design basis fuel or were acceptable for meeting the

applicable regulatory requirements. The criticality evaluation demonstrated that, for all proposed MYSSF configurations, the criticality requirements of 10 CFR Part 72 are met. The original NAC–UMS confinement evaluation remains valid since the design is ''leak-tight.'' The TS were revised and identify the necessary specifications to provide reasonable assurance that the NAC–UMS cask will allow safe storage of all authorized contents.

The staff found that the changes stated above do not reduce the safety margin. In addition, the NRC staff has determined that changes do not pose any increased risk to public health and safety. A full discussion of the staff's evaluation is set out in its SER which can be found under ADAMS Accession No. ML003754655.

This direct final rule revises the NAC–UMS cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1015. The amendment consists of changes to the TS identified in the NRC staff's SER for Amendment No. 1.

The amended NAC–UMS cask system, when used under the conditions specified in the CoC, the TSs, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

CoC No. 1015, the revised Technical Specifications, and the underlying SER for Amendment No. 1, and the Environmental Assessment are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the CoC may be obtained from Keith McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5252, email *KKM@nrc.gov*.

Discussion of Amendments by Section

Section 72.214 List of approved spent fuel storage casks.

Certificate No. 1015 is revised by adding the effective date of the initial certificate and the effective date of Amendment Number 1.

Procedural Background

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1015 and does not include other aspects of the NAC–UMS cask system design. The NRC is using the ''direct final rule procedure'' to promulgate this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial; adequate protection of public health and safety continues to be ensured. This amendment is not considered to be a significant amendment by the NRC staff. The amendment to the rules will become effective on February 20, 2001. However, if the NRC receives significant adverse comments by January 8, 2001, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Federal Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule will amend the CoC for the NAC–UMS cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment No. 1 includes: (1) changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; (2) changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; (3) authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); (4) editorial clarifications to the technical specifications; and (5) deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Electronic copies of the environmental assessment and finding of no significant impact can be found in the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* Single copies are available from Keith McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5252, email KKM@nrc.gov.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the NAC–UMS cask system design list in § 72.214

(List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask system designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On October 19, 2000, (65 FR 62581), the NRC issued an amendment to Part 72 that approved the NAC–UMS design by adding it to the list of NRC-approved cask designs in § 72.214. On July 16, 1999, the certificate holder (NAC), submitted an application to the NRC to amend CoC No. 1015. Amendment No. 1 includes: (1) changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; (2) changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; (3) authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); (4) editorial clarifications to the technical specifications; and (5) deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate the problems described above and is consistent with previous Commission actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the operation of nuclear power plants, independent spent fuel storage facilities, and NAC. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance (CoC) 1015 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1015.

Initial Certificate Effective Date: November 20, 2000.

Amendment No. 1 Effective Date: February 20, 2001.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC–UMS Universal Storage System.

Docket Number: 72–1015.

Certificate Expiration Date: November 20, 2020.

Model Number: NAC–UMS.

* * * * *

Dated at Rockville, Maryland, this 22nd day of November 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–31097 Filed 12–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG57

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the NAC International (NAC) Universal Storage System (NAC–UMS) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to the Certificate of Compliance (CoC). This amendment will allow holders of power reactor operating licenses as general licensees to store PWR design basis fuel assemblies in accordance with revised technical specifications and Maine Yankee site-specific spent fuel in the NAC–UMS. The changes proposed for Amendment No. 1 to the NAC–UMS CoC include: changes to authorized contents to allow Maine Yankee site-specific spent fuels within the PWR basket, including damaged or consolidated fuel in a Maine Yankee fuel can and burnups up to 50,000 MWd/MTU; changes to allow longer times for PWR spent fuel cask loading operations based on reduced heat loads; authorization to store, without canning, intact PWR assemblies with missing grid spacers (up to an unsupported length of 60 inches); editorial clarifications to the technical specifications (TS); and deletion of a certificate reference to the NS–4–FR trade name of the solid neutron shielding material in the VCC shield plug.

DATES: Comments on the proposed rule must be received on or before January 8, 2001.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These documents may also be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found in ADAMS under Accession No. ML003754655. For more information, contact the NRC's Public Document Room Reference Staff at 1–800–397–4209, 301–415–4737 or by e-mail at pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Keith McDaniel, telephone (301) 415–5252, e-mail, KKM@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

The NRC is also publishing this proposed rule as a direct final rule because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial; adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on February 20, 2001. However, if the NRC receives significant adverse comments on the direct final rule by January 8, 2001, then the NRC will publish a document to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d—48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance (CoC) 1015 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1015.

Initial Certificate Effective Date: [November 20, 2000].

Amendment No. 1 Effective Date: February 20, 2001.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC-UMS Universal Storage System.

Docket Number: 72–1015.

Certificate Expiration Date: November 20, 2020.

Model Number: NAC–UMS.

* * * * *

Dated at Rockville, Maryland, this 22nd day of November, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–31098 Filed 12–6–00; 8:45 am]

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Federal Register

Thursday,
December 7, 2000

Part X

The President

Executive Order 13178—Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

Federal Register
Vol. 65, No. 236
Thursday, December 7, 2000

Presidential Documents

Title 3—

The President

Executive Order 13178 of December 4, 2000

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*), and the National Marine Sanctuaries Amendments Act of 2000, Public Law 106-513, and in furtherance of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, it is ordered as follows:

Section 1. *Preamble.* The world's coral reefs—the rain forests of the sea—are in serious decline. These important and sensitive areas of biodiversity warrant special protection. While United States waters contain approximately 3 percent of the world's coral reefs, approximately 70 percent of U.S. coral reefs are in the Northwestern Hawaiian Islands. The 3.5 million acres of coral reefs around the remote, mostly uninhabited Northwestern Hawaiian Islands are spectacular and almost undisturbed by humans. The approximately 1,200 mile stretch of coral islands, seamounts, banks, and shoals are unquestionably some of the healthiest and most extensive coral reefs in the United States. In their own right, the spectacular coral reefs and lands provide an amazing geological record of volcanic and erosive powers that have shaped this area. This vast area supports a dynamic reef ecosystem that supports more than 7,000 marine species, of which approximately half are unique to the Hawaiian Island chain. This incredibly diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles. In addition, this area has great cultural significance to Native Hawaiians as well as linkages to early Polynesian culture—making it additionally worthy of protection and understanding. This is truly a unique and special place, a coral reef ecosystem like no place on earth, and a source of pride, inspiration, and satisfaction for all Americans, especially the people of Hawaii. It is fully worthy of our best efforts to preserve a legacy of America's natural wonders for future generations. Due to the special significance of this area, I have determined that it is in the best interest of our Nation, and of future generations, to provide strong and lasting protection for the coral reef ecosystem of the Northwestern Hawaiian Islands.

On May 26, 2000, I directed the Secretaries of Commerce and the Interior, working cooperatively with the State of Hawaii and consulting with the Western Pacific Fishery Management Council, to develop recommendations for a new, coordinated management regime to increase protection of the coral reef ecosystem of the Northwestern Hawaiian Islands and provide for sustainable use of the area. Upon consideration of their recommendations and comments received during the public visioning process on this initiative, and based on the statutory authorities set forth above, I am issuing this Executive Order.

Sec. 2. *Purpose.* The purpose of this Executive Order is to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species (resources) of the Northwestern Hawaiian Islands.

Sec. 3. *Establishment of Coral Reef Ecosystem Reserve.* There is hereby established in the Northwestern Hawaiian Islands a coral reef ecosystem reserve to be known as the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Reserve shall include submerged lands and waters of the Northwestern Hawaiian Islands, extending approximately 1,200 nautical miles (nm) long and 100nm wide. The Reserve shall be adjacent to and seaward of the seaward boundaries of the State of Hawaii and the Midway Atoll National Wildlife Refuge, and shall overlay the Hawaiian Islands National Wildlife Refuge to the extent that it extends beyond the seaward boundaries of the State of Hawaii. The boundaries of the Reserve are described in section 6 of this order.

Sec. 4. *Management Principles.* The Secretary of Commerce, or his designee, (hereafter ''Secretary'') shall, subject to section 10(b) of this order, manage the Reserve in accordance with the following principles:

(a) The principal purpose of the Reserve is the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands in their natural character;

(b) The Reserve shall be managed using available science and applying a precautionary approach with resource protection favored when there is a lack of information regarding any given activity, to the extent not contrary to law;

(c) Culturally significant, noncommercial subsistence, cultural, and religious uses by Native Hawaiians should be allowed within the Reserve, consistent with applicable law and the long-term conservation and protection of Reserve resources;

(d) The Reserve shall be managed using, when appropriate, geographical zoning and innovative management techniques to ensure that the Reserve resources are protected from degradation or harm;

(e) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to support, promote, and coordinate appropriate scientific research and assessment, and long-term monitoring of Reserve resources, and the impacts or threats thereto from human and other activities, to help better understand, protect, and conserve these resources and species for future generations;

(f) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to enhance public awareness, understanding, and appreciation of Reserve resources, and the impacts or threats thereto from human and other activities;

(g) The Reserve shall be managed to further restoration and remediation of degraded or injured Reserve resources; and

(h) The Reserve shall be managed to facilitate coordinated management among Federal and State agencies and other entities, as appropriate, to provide comprehensive (looking beyond jurisdictional boundaries) conservation of the coral reef ecosystem and related marine resources and species throughout the Northwestern Hawaiian Islands, consistent with applicable authorities and the Management Principles of this section.

Sec. 5. *Implementation.* (a) Management of the Reserve. The Secretary shall manage the Reserve under the National Marine Sanctuaries Act and in accordance with this order.

(b) *Reserve Operations Plan.* The Secretary, in consultation with the Secretary of the Interior and the Governor of Hawaii, shall develop an operations plan to govern the management of the Reserve. In developing the Reserve Operations Plan the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (c) of this section.

The Reserve Operations Plan shall be directed at priority issues and actions that, at a minimum, provide for:

(1) Coordinated management among the Reserve, Hawaiian Islands National Wildlife Refuge, Midway Atoll National Wildlife Refuge, and the State of Hawaii, consistent with relevant authorities;

(2) Coordination among Federal agencies and the Director of the National Science Foundation to make vessels and other resources available for conservation and research activities for the Reserve;

(3) The cleanup and prevention of marine debris in the Reserve;

(4) The restoration or remediation of any degraded or injured resources of the Reserve;

(5) Research, monitoring, and assessment of the Reserve;

(6) Education and outreach about the Reserve and its resources and efforts to conserve them;

(7) Enforcement and surveillance for the Reserve, including the use of new technologies and coordination with the United States Coast Guard and other relevant agencies;

(8) Identification and coordination with Native Hawaiian interests, regarding culturally significant, noncommercial subsistence, cultural, and religious uses and locations within the Reserve;

(9) Identification of potential tourism, recreational, and commercial activities within the Reserve and actions necessary to ensure that these activities do not degrade the Reserve's resources or diminish the Reserve's natural character;

(10) Use of vessel monitoring systems for any vessel entering or transiting the Reserve, if warranted. To this end, the Secretary in consultation with the Department of State, United States Coast Guard, and the Department of Defense, shall evaluate the need for the establishment of vessel monitoring systems and, if warranted, shall initiate the steps necessary to have the appropriate domestic agencies, and request that the International Maritime Organization, adopt a vessel monitoring system requirement for the Reserve;

(11) Any regulations, in addition to the conservation measures and Reserve Preservation Areas established under this order, that the Secretary determines are necessary to manage the Reserve in accordance with this order; and

(12) Coordination of all relevant activities with the process to designate the Reserve as a National Marine Sanctuary, as provided under paragraph (f) of this section.

(c) *Conservation Measures.* The Reserve Operations Plan shall also include the conservation measures in section 7 of this order and the Reserve Preservation Areas in section 8 of this order.

(d) *Memorandum of Agreement.* To further paragraph (b)(1) of this section, and subject to section 10(b) of this order, and in particular to promote coordinated management of the entirety of the shallow areas of the coral reef ecosystem throughout the Northwestern Hawaiian Islands, the Secretary shall work with the Secretary of the Interior and Governor of the State of Hawaii to enter into one or more memoranda of agreement for the coordinated conservation and management of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawaii submerged lands and waters within the Northwestern Hawaiian Islands.

(e) *National Marine Sanctuary.* The Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (16 U.S.C. 1433, 1434). In doing so the Secretary shall supplement or complement the existing Reserve. The Secretary shall, in consultation with the Governor of the State of Hawaii, determine whether State submerged lands and waters should be included as part of the sanctuary. In designating and managing the

sanctuary, the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (f) of this section.

(f) *Council.* After considering input from the Secretary of the Interior and Governor of the State of Hawaii, the Secretary shall establish a Coral Reef Ecosystem Reserve Council pursuant to section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) to provide advice and recommendations on the Reserve Operations Plan and designation and management of any sanctuary. The Council shall include:

(1) Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

(2) Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

(A) Marine mammal science.

(B) Coral reef ecology.

(C) Native marine flora and fauna of the Hawaiian Islands.

(D) Oceanography.

(E) Any other scientific discipline the Secretary determines to be appropriate.

(3) Three representatives from nongovernmental wildlife/marine life, environmental, and/or conservation organizations.

(4) One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.

(5) One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.

(6) One representative from the ocean-related tourism industry.

(7) One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.

(8) One citizen-at-large representative.

(9) One representative from the State of Hawaii as appointed by the Governor.

(10) One representative each, as nonvoting, *ex officio* members, from the Department of the Interior, United States Coast Guard, Department of Defense, Department of State, the National Marine Fisheries Service, the Hawaiian Islands Humpback Whale National Marine Sanctuary, National Science Foundation, Marine Mammal Commission, and Western Pacific Regional Fishery Management Council.

(g) *Report.* The Secretary shall provide a progress report on the implementation of this order to the Chair of the Council on Environmental Quality within 1 year from the date of this order.

Sec. 6. *Area of the Reserve.* The Reserve includes the waters and submerged lands of the Northwestern Hawaiian Islands as follows:

(a) The seaward boundary of the Reserve is 50nm from the approximate center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semicircles of the 50nm areas that lie around such areas shall delimit the remainder of the Reserve.

(b) The inland boundary of the Reserve around each of the areas named in subparagraph (a) of this section is the seaward boundary of Hawaii State waters and submerged lands, and the seaward boundary of the Midway Atoll National Wildlife Refuge, as appropriate.

(c) The Reserve boundary is generally depicted on the map attached to this order. The Secretary, after consultation with the Governor of the State

of Hawaii, may make technical modifications to the boundary of the Reserve, including providing straight-line boundaries for the Reserve for clarity and ease of identification, as appropriate.

Sec. 7. *Protection and Conservation Measures.* The conservation measures in this section apply throughout the Reserve.

(a) (1) *Commercial Fishing.* All currently existing commercial Federal fishing permits and current levels of fishing effort and take, as determined by the Secretary and pursuant to regulations in effect on the date of this order, shall be capped as follows:

(A) No commercial fishing may occur in Reserve Preservation Areas pursuant to section 8 of this order;

(B) There shall be no increase in the number of permits of any particular type of fishing (such as for bottomfishing) beyond the number of permits of that type in effect the year preceding the date of this order;

(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing in the years preceding the date of this order, as determined by the Secretary, provided that the Secretary shall equitably divide the aggregate level into individual levels per permit, and further provided that the Secretary may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(D) There shall be no permits issued for any particular type of fishing for which there were no permits issued in the year preceding the date of this order; and

(E) The type of fishing gear used by any permit holder may not be changed except with the permission of the Secretary, as provided under paragraph 3 of this section.

(2) *Recreational Fishing.* All currently existing (preceding the date of this order) levels of recreational fishing effort, as determined by the Secretary and pursuant to regulations in effect on the day of this order, shall be capped (i.e., no increase of take levels or levels of fishing effort, species targeted, or change in gear types) throughout the Reserve. However, fishing is further restricted as provided in section 8 of this order.

(3) The Secretary, after consultation with the Secretary of the Interior and Governor of the State of Hawaii, and after public review and comment and consideration of any advice or recommendations of the Reserve Council and Western Pacific Regional Fishery Management Council, may further restrict the fishing activities under subparagraphs (a)(1) and (a)(2) of this section if necessary to protect Reserve resources, or may authorize or require alternate gear types if such gear would offer equal or greater protection for Reserve resources.

(b) In addition to the conservation measures in paragraph (a) of this section, the following activities are prohibited throughout the Reserve:

(1) Exploring for, developing, or producing oil, gas, or minerals;

(2) Having a vessel anchored on any living or dead coral with an anchor, an anchor chain, or an anchor rope when visibility is such that the seabed can be seen;

(3) Drilling into, dredging, or otherwise altering the seabed; or constructing, placing, or abandoning any structure, material, or other matter on the seabed, except as an incidental result of anchoring vessels;

(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust; and

(5) Removal, moving, taking, harvesting, or damaging any living or nonliving Reserve resources, except as provided under paragraph (a) of this section and sections 8(a) and 9 of this order.

(c) The Secretary may conduct, or authorize by permit the activities listed in subparagraphs (b)(3)-(5) of this section to the extent that they are necessary for research, monitoring, education, or management activities that further the Management Principles of section 4 of this order.

Sec. 8. *Reserve Preservation Areas.*

(a) To further protect Reserve resources, the following areas are hereby established as Reserve Preservation Areas until some or all are made permanent after adequate public review and comment, within which all activities referred to in paragraph (b) of this section are prohibited.

(1) From the seaward boundary of Hawaii State waters and submerged lands to a mean depth of 100 fathoms (fm) around:

(A) Nihoa Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(B) Necker Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(C) French Frigate Shoals;

(D) Gardner Pinnacles, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(E) Maro Reef, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(F) Laysan Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(G) Lisianski Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(H) Pearl and Hermes Atoll; and

(I) Kure Island.

(2) Twelve nautical miles around the approximate geographical centers of:

(A) The first bank immediately east of French Frigate Shoals;

(B) Southeast Brooks Bank, which is the first bank immediately west of French Frigate Shoals, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately west;

(C) St. Rogatien Bank, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately east, provided further that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment;

(D) The first bank west of St. Rogatien Bank, east of Gardner Pinnacles;

(E) Raita Bank; and

(F) Pioneer Bank, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless

and until the Secretary determines otherwise after adequate public review and comment.

(b) Activities Prohibited Within Reserve Preservation Areas.

(1) In addition to the conservation measures in section 7 of this order, which are applicable to the entire Reserve, the following activities are prohibited within the Reserve Preservation Areas listed in paragraph (a) of this section, except as expressly otherwise stated in this paragraph and sections (8)(a) and 9 of this order:

(A) Commercial and recreational fishing;

(B) Anchoring in any area that contains available mooring buoys, or anchoring outside an available anchoring area when such area has been designated by the Secretary;

(C) Any type of touching or taking of living or dead coral;

(D) Discharging or depositing any material or other matter except cooling water or engine exhaust; and

(E) Such other activities that the Secretary identifies after adequate public review and comment, and after consideration of any advice and recommendations of the Reserve Council.

(2) Notwithstanding the prohibitions in this paragraph, the Secretary may conduct, or authorize by permit, research, monitoring, education, or management activities within any Reserve Preservation Area that further the Management Principles of section 4 of this order.

(3) The Reserve Preservation Areas in this section are approximated using fathoms. The Secretary will develop straight line boundaries based on longitude and latitude coordinates to encompass each Reserve Preservation Area, to provide for clarity and ease of identification. The Secretary may make technical modifications to any such boundaries.

Sec. 9. *Native Hawaiian Uses.* Native Hawaiian noncommercial subsistence, cultural, or religious uses may continue, to the extent consistent with existing law, within the Reserve and Reserve Preservation Areas identified under section 8 of this order. The Secretary shall work with Native Hawaiian interests to identify those areas where such Native Hawaiian uses of the Reserve's resources may be conducted without injury to the Reserve's coral reef ecosystem and related marine resources and species, and may revise the areas where such activities may occur after public review and comment, and consideration of any advice and recommendations of the Reserve Council.

Sec. 10. *National Wildlife Refuges.*

(a) The Secretary of the Interior, in managing, through the U.S. Fish and Wildlife Service the Hawaiian Islands and Midway Atoll National Wildlife Refuges pursuant to the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) and other applicable laws, shall follow the Management Principles of section 4 of this order, to the extent consistent with applicable law.

(b) Wherever the Reserve overlaps the Hawaiian Islands National Wildlife Refuge, the Reserve shall be managed to supplement and complement management of the Refuge to ensure coordinated conservation and management of the Reserve and the Refuge, consistent with the purposes and policies of the National Marine Sanctuaries Act, the National Marine Sanctuaries Amendments Act of 2000, and this order, and the authorities of the U.S. Fish and Wildlife Service under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) and other laws with respect to management of the Refuge. Nothing in this order shall enlarge or diminish the jurisdiction or authority of the Secretary or Secretary of the Interior in managing the Reserve or Refuge, respectively.

(c) The Secretary of the Interior, through the U.S. Fish and Wildlife Service, shall coordinate with the Secretary and the Governor of the State

of Hawaii, as provided under section 5(b) of this order, to ensure coordinated protection and management among the Reserve, Refuges, and State, consistent with relevant authorities.

Sec. 11. *Administration and Judicial Review.*

(a) *International Law.* Management of the Reserve and any regulations issued pursuant thereto and all other provisions of this order shall be applied consistently with the 1983 Presidential Proclamation on the Exclusive Economic Zone, the 1988 Presidential Proclamation on the Territorial Sea, and the 1999 Presidential Proclamation on Contiguous Zone and in accordance with generally recognized principles of international law, and with the treaties, conventions, and other agreements to which the United States is a party. The Secretary shall consult with the Department of State in implementing this order.

(b) *Agency Responsibilities.* All Federal agencies whose actions may affect the Reserve and any National Marine Sanctuary established by the Secretary pursuant to this order shall carry out such actions in accordance with applicable laws, regulations and Executive Orders, including Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000.

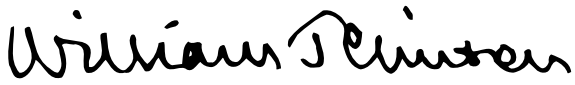
(c) *National Security and Emergency Actions.* Consistent with applicable law, nothing in this order is intended to apply to military activities (including those carried out by the United States Coast Guard), including military exercises, conducted within or in the vicinity of the Reserve, consistent with the requirements of Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000. Further, nothing in this order is intended to restrict the Department of Defense from conducting activities necessary during time of war or national emergency, or when necessary for reasons of national security as determined by the Secretary of Defense, consistent with applicable law. In addition, consistent with applicable law, nothing in this order shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

(d) *United States Coast Guard.* Nothing in this order is intended to limit the authority of the United States Coast Guard to enforce any Federal law, or install or maintain aids to navigation.

(e) *Funding.* This order shall be carried out subject to the availability of appropriated funds and to the extent permitted by law.

(f) *Territorial Waters.* Nothing in this order shall enlarge or diminish the jurisdiction or authority of the State of Hawaii or the United States over submerged or other lands within the territorial waters off the coast of Hawaii.

(g) *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
December 4, 2000.

[FR Doc. 00–31313
Filed 12–6–00; 8:45 am]
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Federal Register

Thursday,
December 7, 2000

Part XI

The President

Proclamation 7384—National Drunk and Drugged Driving Prevention Month, 2000

Federal Register
Vol. 65, No. 236
Thursday, December 7, 2000

Presidential Documents

Title 3—

The President

Proclamation 7384 of December 4, 2000

National Drunk and Drugged Driving Prevention Month, 2000

By the President of the United States of America

A Proclamation

Driving is an integral part of American culture and daily living; but it is also a privilege that carries great responsibility. To protect ourselves and others, we must always be safe, sober, and drug-free behind the wheel.

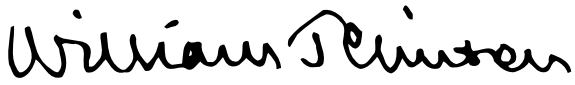
As a Nation, we have made steady progress in reducing alcohol-related deaths through stronger laws, tougher enforcement, and increased public awareness. Last year, alcohol-related traffic fatalities reached a historic low. But even one death is still one too many; that is why I was pleased to sign into law this October a nationwide impaired-driving standard of .08 blood alcohol content (BAC). Once all 50 States set their BAC limits to .08, we can save hundreds of lives and prevent thousands of injuries each year on America's streets and highways.

There are other measures we are taking to reduce the incidence of drunk driving. Last December, the Department of Transportation unveiled the ''You Drink and Drive. You Lose.'' campaign, an effort to promote greater public awareness of the dangers of impaired driving. In just 1 year, hundreds of communities and law enforcement agencies have joined the campaign, helping to reach nearly 100 million Americans with this simple but lifesaving message.

In memory of the thousands of victims who have lost their lives to alcohol- and drug-impaired drivers, I ask all motorists to participate in ''National Lights On for Life Day'' on December 15, 2000, by driving with their vehicle headlights illuminated. By doing so, we will call attention to this devastating national problem and remind others on the road of their responsibility to drive sober and drug-free.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 2000 as National Drunk and Drugged Driving Prevention Month. I urge all Americans to acknowledge the dangers of impaired driving, to make the right choice by designating a sober driver, to prevent impaired family members and friends from getting behind the wheel, and to help teach our young drivers the importance of alcohol- and drug-free driving. I also call on all State, county, and local leaders to make safety a top priority and to work together to make our Nation's transportation system the safest it can be.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of December, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



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Hazardous waste program authroizations:

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National priorities list update; comments due by 12-11-00; published 11-9-00

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.J. Res. 126/P.L. 106–537

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 5, 2000; 114 Stat. 2562)

Last List November 29, 2000

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