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Rules and Regulations

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 302, 317, 330, 333, and 335

RIN 3206–AJ11

Reasonable Accomodation Requirements in Vacancy Announcements

AGENCY: Office of Personnel Management.

ACTION: Interim rule and request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing this interim regulation to require a reasonable accommodation statement in agency vacancy announcements. The intent of this action is to provide language that agencies can use or modify to inform applicants with disabilities that agencies offer reasonable accommodation.

DATES: These regulations are effective January 10, 2002. Comments must be received on or before February 11, 2002.

ADDRESSES: Send written comments to Ellen E. Tunstall, Assistant Director for Employment Policy, Office of Personnel Management, Room 6500, 1900 E Street NW. Washington, DC 20415–9500.

FOR FURTHER INFORMATION CONTACT: Linda Watson (Parts 302, 330, 333, and 335), 202–606–1252, Jacqueline Yeatman (Part 330, subpart G), 202–606–2786; or Marcia Staten (Part 317), 202–606–1832.

SUPPLEMENTARY INFORMATION:

Background

Reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for jobs, to gain access to the work environment, to perform job duties, or to enjoy the benefits and privileges of employment. Routinely, agencies provide services, establish active recruitment programs and use selective placement appointment authorities that focus on people with disabilities. Section 501 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in Federal employment. The law requires Federal employers to develop and implement affirmative action programs that promote the hiring, placement, and advancement of people with disabilities. It encourages employers to hire people with disabilities in all grade levels and occupational series according to the qualifications for the job and to provide reasonable accommodation when appropriate.

Executive Order 13078, dated March 13, 1998, established the National Task Force on Employment of Adults with Disabilities. The Task Force received the assignment of creating and coordinating an aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. To accomplish this the Task Force established a Federal Personnel Review Workgroup comprised of representatives from 11 different Federal agencies.

The Workgroup found that vacancy announcements and other recruiting materials of most Federal agencies did not include a reasonable accommodation statement. The Workgroup recommended that OPM and the Equal Employment Opportunity Commission work together in developing reasonable accommodation language for vacancy announcements and revise regulations to require all Federal agencies to include a reasonable accommodation statement in vacancy announcements.

OPM issued a memorandum on March 2, 2000, instructing Federal agencies to include a reasonable accommodation statement on all future vacancy announcements. Executive Order 13164, dated July 26, 2000, requires Federal agencies to establish procedures for reasonable accommodation.

This interim rule includes minor changes to vacancy announcements in the excepted service, Senior Executive Service, and competitive service, including temporary and term positions, covered under 5 CFR Parts 302, 317, 330, and 333. This interim rule includes guidance for including reasonable accommodation language in Federal vacancy announcements.

The revision of 5 CFR Part 330, subpart G adds ''Reasonable accommodation statement'' to the list of items that must be included in all vacancy announcements published on USAJOBS as required under 5 CFR 330.707. This change supports the requirement for specific information on the vacancy announcement and establishes consistency in the information USAJOBS provides to applicants about vacancies. OPM's authority to require specific items in vacancy announcements for competitive service positions is title 5 U.S.C. 3330.

The revision to 5 CFR 335 updates the reference to reflect changes caused by the revision of 5 CFR 330, subpart G.

Recommended Reasonable Accommodation Statement

OPM recommends use of the following language in all future job announcements.

''This agency provides reasonable accommodation to applicants with disabilities where appropriate. If you need a reasonable accommodation for any part of the application and hiring process, please notify the agency. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.''

Modification of the Reasonable Accommodation Statement

Agencies may use wording of their choice that conveys the availability of reasonable accommodation. The statement must not list any specific type of medical condition or physical impairment as appropriate for a reasonable accommodation request.

Processing Reasonable Accommodation Requests

Agencies should designate an individual as a contact for reasonable accommodation requests. The contact must have sufficient knowledge about the agency's internal procedures for reasonable accommodation requests to prevent misinforming or frustrating the applicant with disabilities. OPM suggests that agencies include a general phone number, a TDD number, or email address for the contact.

Pursuant to Executive Order 13164, dated July 26, 2000, agencies are required to develop their own procedures for processing reasonable

accommodation requests. These instructions should be in writing to provide for consistency.

Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. In developing this regulation, OPM worked extensively with affected stakeholders.

Regulatory Flexibility Act

I certify that these regulations would not have significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

Executive Order 12866, Regulatory Review

This interim rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 302, 317, 330, 333, and 335

Armed forces reserves, Government employees, Individuals with disabilities.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending parts 302, 317, 330, 333, and 335 of title 5 of the Code of Federal Regulations as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

1. The authority citation in part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

2. In subpart A § 302.106 is added to read as follows:

Subpart A—General Provisions

§ 302.106 Vacancy Announcements.

When an agency announces a vacancy in the excepted service, the announcement must contain a reasonable accommodation statement that complies with requirements in § 330.707 of subpart G of this chapter.

''This agency provides reasonable accommodation to applicants with disabilities where appropriate. If you need a reasonable accommodation for any part of the application and hiring process, please notify the agency. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.''

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

3. The authority citation in part 317 is revised to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, 3595 and 3596.

4. In § 317.501, paragraph (b)(2) is revised to read as follows:

Subpart E—Career Appointments

§ 317.501 Recruitment and selection for initial SES career appointment be achieved from the brightest and most diverse pool possible.

* * * * *

(b) ***

(2) Before an agency can fill an SES vacancy by career appointment, it must post a vacancy announcement in USAJOBS for at least 14 calendar days, including the date of publication. Each agency's SES vacancy announcement must comply with criteria in § 330.707 of subpart G of this chapter.

* * * * *

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

5. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3327 and 3330; E.O. 10577, 3 CFR 1954–58 Comp., p.218.

Section 330.102 also issued under 5 U.S.C. 3327.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Subpart K also issued under sec. 11203 of Pub. L. 105–33, 111 Stat. 738 and Pub. L. 105–274, 112 Stat. 2424.

Subpart L also issued under sec.1232 of Pub. L. 96–70, 93 Stat. 452.

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

6. In § 330.707, paragraph (b)(14) is added to read as follows:

§ 330.707 Reporting vacancies to OPM.

* * * * *

(b)***

(14) Reasonable accommodation statement.

(i) An agency may use wording of its choice that conveys the availability of reasonable accommodation. An agency must not list types of medical conditions or impairments as appropriate for accommodation, and must keep the wording simple.

(ii) We recommend using the following statement:

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

7. The authority citation for part 333 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3327, 3330; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104.

8. Section 333.102 is revised to read as follows:

§ 333.102 Notice of job announcements to OPM.

Under 5 U.S.C. 3327, and 3330, agencies are required to report job announcements to OPM when recruiting outside the register. This requirement is implemented through § 330.707 of subpart G of this chapter.

PART 335—PROMOTION AND INTERNAL PLACEMENT

9. The authority citation in part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3304(f), 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; and Pub. L. 106–117.

10. Section 335.105 is revised to read as follows:

§ 335.105 Notice of job announcements to OPM.

Under 5 U.S.C. 3330, agencies are required to report job announcements to OPM for vacancies for which an agency will accept applications from outside the agency's work force. This requirement is implemented through § 330.707 of subpart G of this chapter.

[FR Doc. 01–30531 Filed 12–10–01; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 534, 591, and 930

RIN 3206–AJ44

Pay for Administrative Appeals Judge Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement a new pay system for administrative appeals judge positions. The administrative appeals judge pay system was recently authorized to cover positions which are not classifiable above GS–15 and for which the duties primarily involve reviewing decisions of administrative law judges. OPM is issuing interim regulations to ensure that agencies administer the new administrative appeals judge pay system in a consistent and equitable manner. These interim regulations also implement changes in law regarding the manner in which the administrative law judge basic pay schedule is adjusted.

DATES: *Effective Date*: The regulations are effective on December 11, 2001.

Applicability Date: The regulations apply on the first day of the first applicable pay period beginning on or after December 11, 2001.

Comments Date: Comments must be received on or before February 11, 2002.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email: *payleave@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Jeanne Jacobson, (202) 606–2858; FAX: (202) 606–0824; or email: *payleave@opm.gov.*

SUPPLEMENTARY INFORMATION:

Section 645 of the Treasury and General Government Appropriations Act, 2001, as incorporated in Public Law 106–544 by section 101(a)(3) of that Public Law, established a new pay system for administrative appeals judge (AAJ) positions effective on the first day of the first pay period beginning on or after April 20, 2001. The AAJ pay system is authorized under a new section 5372b of title 5, United States Code. New section 5372b authorizes the heads of Executive agencies (not including the U.S. General Accounting Office) to fix the rates of basic pay for AAJ positions. Section 5372b authorizes the Office of Personnel Management (OPM) to issue regulations under which the head of an Executive agency must fix the rate of basic pay for each AAJ position. The new regulations will appear in a new subpart F of part 534 of title 5, Code of Federal Regulations.

Coverage

Section 5372b of title 5, United States Code, defines an ''administrative appeals judge position'' as a position not classifiable above GS–15, the duties of which primarily involve reviewing decisions of administrative law judges (ALJs) appointed under 5 U.S.C. 3105. Section 534.601 of these interim regulations restates this statutory definition and clarifies that employees in AAJ positions review ALJ decisions and render final administrative decisions.

Section 534.601 of the interim regulations also provides that the AAJ pay system does not cover employees already excluded from the General Schedule (GS) classification system established under 5 U.S.C. chapter 51. Members of the Senior Executive Service (SES), employees in senior-level (SL) and scientific or professional positions, ALJs, and employees in positions whose pay is fixed by administrative action and limited to level IV of the Executive Schedule also are excluded from the AAJ pay system.

Pay Structure

Under 5 U.S.C. 5372b, the head of an Executive agency may set the rate of basic pay for employees in AAJ positions at a rate not less than the minimum rate of basic pay for level AL–3 and not more than the maximum rate of basic pay for level AL–3 of the ALJ pay system under 5 U.S.C. 5372. To be consistent with the law, § 534.603 of these interim regulations links the structure of the AAJ pay system directly to the structure of level AL–3 of the ALJ pay system. Since employees in AAJ positions review the decisions made by ALJs, linking to the ALJ basic pay structure also will help to ensure that employees in both pay systems are paid equitably.

Section 534.603 of the interim regulations establishes six rates of basic pay for the AAJ pay system—AA–1, 2, 3, 4, 5, and 6. These rates correspond to the rates of basic pay for AL–3/A, B, C, D, E, and F of the ALJ pay system under 5 U.S.C. 5372, as shown in the following table:

AAJ pay level	ALJ pay level	Rate of basic pay in 2001
AA–1	AL–3/A	$82,100
AA–2	AL–3/B	$88,300
AA–3	AL–3/C	$94,700
AA–4	AL–3/D	$101,000
AA–5	AL–3/E	$107,300
AA–6	AL–3/F	$113,600

The interim regulations provide that each of the rates of basic pay of the AAJ pay system will be adjusted at the same time and in the same manner as the corresponding rates of basic pay of the ALJ pay system are adjusted under 5 U.S.C. 5372.

Pay Administration

Section 534.604 of these interim regulations provides the basic pay administration rules for the AAJ pay system. These provisions are consistent with the ALJ pay administration rules found in 5 U.S.C. 5372 and 5 CFR part 930, subpart B. Section 534.601(a) provides the head of each agency with authority to fix the rate of basic pay for each AAJ position within the agency. Section 534.604(b) requires the head of each agency to set the pay of an employee initially appointed to the AAJ pay system at rate AA–1, except as described below.

The regulations provide the following three exceptions for setting pay above rate AA–1, up to the maximum rate AA–6:

1. The regulations require agencies to set the pay of an employee under the GS pay system, who is appointed to an AAJ position without a break in service, at the lowest rate of basic pay of the AAJ pay system that equals or exceeds the employee's GS rate of basic pay immediately before the appointment. If the resulting basic pay increase is less than one-half of the dollar value of the employee's next within-grade increase, agencies must set the employee's rate of basic pay at the next higher rate of basic pay in the AAJ rate range.

2. The regulations provide agencies with discretion to set pay at a higher rate based on a rate of basic pay the applicant received in a prior Federal position.

3. The regulations provide agencies with discretion to set the rate of basic pay of an applicant who is not a current Federal employee at a higher rate based on the superior qualifications of the applicant.

Section 534.604(c) of the interim regulations provides that employees in AAJ positions will advance successively to rates AA–2, 3, and 4 upon completion of 52 weeks of service in the next lower rate, and to rates 5 and 6 upon completion of 104 weeks of service in the next lower rate. Service time under a pay system outside the AAJ pay system does not count toward the required period of service, except for service under the ALJ pay system established under 5 U.S.C. 5372 when an employee moves from an ALJ position to an AAJ position without a break in service.

Section 534.604(d) provides procedures for converting the AAJ

annual rate of pay to an hourly, daily, weekly, or biweekly rate.

Conversion

On the first day of the first pay period beginning on or after December 11, 2001, agencies must convert the rate of basic pay of employees under the AAJ pay system to a rate of basic pay provided by these regulations. Section 534.605 requires agencies to set the rate of basic pay of an AAJ at the lowest rate of basic pay provided by § 534.603(a) that equals or exceeds the rate of basic pay the AAJ received immediately before this date.

Locality Payments and Non-Foreign Area Cost-of-Living Allowances

The President's Pay Agent (consisting of the Secretary of Labor and the Directors of the Office of Management and Budget and OPM) extended locality-based comparability payments to employees covered by the AAJ pay system under the authority of 5 U.S.C. 5304(h), effective on the first day of the first pay period beginning on or after April 20, 2001. Locality payments must be paid to employees in AAJ positions in accordance with 5 U.S.C. 5304 and 5 CFR part 531, subpart F. Under these rules, the locality rate of pay of employees in AAJ positions may not exceed the rate for level III of the Executive Schedule ($133,700 in 2001).

The interim regulations amend 5 CFR 591.203 to allow any employees in AAJ positions who are employed in an area covered by a nonforeign area cost-of-living allowance or post differential to receive that benefit.

Administrative Law Judges

These interim regulations amend 5 CFR 930.210(a) to reflect changes in law concerning how the administrative law judge pay levels are set and adjusted. Section 1 of Public Law 106–97 (November 12, 1999) amended the ALJ pay law (5 U.S.C. 5372). Under this section, as amended, the rate of basic pay for AL–3/A may not be less than 65 percent of the rate for level IV of the Executive Schedule, and the rate of basic pay for AL–1 may not exceed the rate for level IV of the Executive Schedule. (Section 5372(b)(4) gives the President authority to adjust the rates of basic pay for ALJs, subject to the pay range described above. Such adjustments are effective on the first day of the first applicable pay period beginning on or after the first day of the month in which General Schedule rates of basic pay are adjusted under 5 U.S.C. 5303.) Based on agency inquiries, we also added a provision to § 930.210(a) to clarify that agencies must use a 2,087-hour payroll divisor to determine the hourly, daily, weekly, and biweekly pay rate of an ALJ in accordance with 5 U.S.C. 5504.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making these regulations effective in less than 30 days. Section 645 of the Treasury and General Government Appropriations Act, 2001, as incorporated in Public Law 106–544 by section 101(a)(3) of that Public Law, became effective for service performed by an administrative appeals judge on the first day of the first applicable pay period beginning on or after April 20, 2001. These regulations must be issued as interim to ensure that agencies administer the new administrative appeals judge pay system in a consistent and equitable manner. These regulations must be made effective prior to January 1, 2002, to ensure that administrative appeals judges receive the January 2002 basic pay adjustment in a consistent and equitable manner.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 534, 591, and 930

Administrative practice and procedure, Computer technology, Government employees, Hospitals, Motor vehicles, Students, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management

Kay Coles James,

Director.

Accordingly, OPM is amending parts 534, 591, and 930 of title 5, Code of Federal Regulations, as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 is amended to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5372b, 5376, 5384, 5541, and 5550a.

2. Subpart F is added to read as follows:

Subpart F—Pay for Administrative Appeals Judge Positions

Sec.
534.601 Coverage.
534.602 Definitions.
534.603 Rates of Basic Pay.
534.604 Pay Administration.
534.605 Conversion.

Subpart F—Pay for Administrative Appeals Judge Positions

§ 534.601 Coverage.

(a) This subpart implements 5 U.S.C. 5372b and applies to administrative appeals judge positions, the duties of which are not classifiable above GS–15 under 5 U.S.C. 5108 and which primarily involve reviewing decisions of administrative law judges appointed under 5 U.S.C. 3105 and rendering final administrative decisions.

(b) This subpart does not apply to—

(1) Senior-level positions classified above GS–15 pursuant to 5 U.S.C. 5108;

(2) Scientific or professional positions established under 5 U.S.C. 3104;

(3) Senior Executive Service positions established under 5 U.S.C. 3132 or 3151;

(4) Positions for which pay is fixed by administrative action and limited to level IV of the Executive Schedule under 5 U.S.C. 5373;

(5) Administrative law judge positions appointed under 5 U.S.C. 3105; or

(6) Positions in agencies that are excluded from chapter 51 of title 5, United States Code, by section 5102(a) or 5102(c) or other provision of law.

§ 534.602 Definitions.

Administrative appeals judge position means a position not classified above GS–15 under 5 U.S.C. 5108 and for which the duties primarily involve reviewing decisions of administrative law judges appointed under 5 U.S.C. 3105 and rendering final administrative decisions.

Administrative law judge means an individual in an *administrative law judge* position as that term is defined in section 930.202 of this chapter.

Agency means an *Executive agency,* as defined in 5 U.S.C. 105, excluding the U.S. General Accounting Office.

Head of an agency means the head of an Executive agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

§ 534.603 Rates of Basic Pay.

(a) The administrative appeals judge pay system (AA) has six rates of basic pay—AA–1, 2, 3, 4, 5, and 6. These rates correspond to the rates of basic pay for AL–3/A, B, C, D, E, and F, respectively, of the administrative law judge pay

system established under 5 U.S.C. 5372 and part 930, subpart B, of this chapter.

(b) The rates of basic pay of the administrative appeals judge pay system will be adjusted at the same time and in the same manner as adjustments are made in the corresponding rates of basic pay for the administrative law judge pay system under 5 U.S.C. 5372.

§ 534.604 Pay Administration.

(a) The head of each agency must fix the rate of basic pay for each administrative appeals judge position within the agency.

(b) Upon initial appointment, an agency must set the rate of basic pay of an administrative appeals judge at the minimum rate AA–1 of the administrative appeals judge pay system, except as provided in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(1) An agency must set the pay of an employee under the General Schedule pay system who is appointed to an administrative appeals judge position without a break in service at the lowest rate of basic pay of the administrative appeals judge pay system that equals or exceeds the rate of basic pay the employee received immediately prior to such appointment, not to exceed the rate of basic pay for AA–6. If the resulting basic pay increase is less than one-half of the dollar value of the employee's next within-grade increase, the agency must set the employee's rate of basic pay at the next higher rate of basic pay in the basic rate range of the administrative appeals judge pay system.

(2) An agency may offer an administrative appeals judge applicant with prior Federal service a rate up to the lowest rate of basic pay of the administrative appeals judge pay system that equals or exceeds the employee's highest previous rate of basic pay in a Federal civil service position, not to exceed the rate of basic pay for AA–6.

(3) An agency may offer an administrative appeals judge applicant with superior qualifications who is not a current Federal employee a higher than minimum rate when such a rate is clearly necessary to meet the needs of the Government. An agency may pay a higher than minimum rate of pay that is next above the applicant's existing pay or earnings, up to the maximum rate AA–6. Superior qualifications for applicants include, but are not limited to, having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field.

(c) Administrative appeals judges will advance successively to rates AA–2, 3, and 4 upon completion of 52 weeks of service in the next lower rate, and to rates 5 and 6 upon completion of 104 weeks of service in the next lower rate. Advancement to a higher rate takes effect on the first day of the first pay period beginning on or after completion of the required period of service. Time in a nonpay status is creditable service in the computation of a waiting period in so far as it does not exceed 2 weeks for each 52 weeks of service. Time in a nonpay status is fully creditable if the absence is due to military service, as defined in 5 U.S.C. 8331(13), or receipt of injury compensation under chapter 81 of title 5, United States Code. Time under pay systems outside the administrative appeals judge pay system is not creditable service in computing the required waiting period, except that time under the administrative law judge pay system established under 5 U.S.C. 5372 is creditable when an individual moves from that system to the administrative appeals judge pay system without a break in service.

(d) An agency must use the following procedures to convert an administrative appeals judge's annual rate of basic pay to an hourly, daily, weekly, or biweekly rate:

(1) To derive an hourly rate, divide the annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent.

(2) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative appeals judge's basic daily tour of duty.

(3) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 534.605 Conversion.

On the first day of the first pay period beginning on or after December 11, 2001, agencies must convert the rate of basic pay of an administrative appeals judge to the lowest rate of basic pay provided by § 534.603(a) of this subpart that equals or exceeds the rate of basic pay the administrative appeals judge received immediately before that date.

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

3. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

4. A new paragraph (a)(8) is added to § 591.203 to read as follows:

§ 591.203 Employees covered.

(a) * * *

(8) Administrative appeals judges paid under 5 U.S.C. 5372b.

* * * * *

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Appointment, Pay and Removal of Administrative Law Judges

5. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521.

6. In § 930.210, paragraph (a) is revised to read as follows:

§ 930.210 Pay.

(a) OPM will place each administrative law judges position in one of the three grades or levels of basic pay, AL–3, AL–2, or AL–1, of the Administrative Law Judge Pay System established under 5 U.S.C. 5372 in accordance with this section. AL–3 has six rates of basic pay, A, B, C, D, E, and F.

(1) The rate of basic pay for AL–3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule. The rate of basic pay for AL–1 may not exceed the rate for level IV of the Executive Schedule.

(2) The President will determine the appropriate adjustment for each rate in the Administrative Law Judge Pay System, subject to paragraph (a)(1) of this section. Such adjustments will take effect on the first day of the first applicable pay period beginning on or after the first day of the month in which adjustments in the General Schedule rates of basic pay under 5 U.S.C. 5303 take effect.

(3) An agency must use the following procedures to convert an administrative law judge's annual rate of basic pay to an hourly, daily, weekly, or biweekly rate:

(i) To derive an hourly rate, divide the annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent.

(ii) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative appeals judge's basic daily tour of duty.

(iii) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

* * * * *

[FR Doc. 01–30530 Filed 12–10–01; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 01–020–2]

Brucellosis in Cattle; State and Area Classifications; Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Florida from Class A to Class Free. The interim rule was based on our determination that Florida meets the standards for Class Free Status. The interim rule relieved certain restrictions on the interstate movement of cattle from Florida.

EFFECTIVE DATE: The interim rule became effective on June 13, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 13, 2001, and published in the **Federal Register** on June 19, 2001 (66 FR 32893–32894, Docket No. 01–020–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Florida from the list of Class A States in paragraph (b) of § 78.41 and adding it to the list of Class Free States in paragraph (a) of that section.

Comments on the interim rule were required to be received on or before August 20, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 66 FR 32893–32894 on June 19, 2001.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 6th day of December 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–30600 Filed 12–10–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–029–2]

Change in Disease Status of the Republic of San Marino and the Independent Principalities of Andorra and Monaco

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding the Republic of San Marino and the independent principalities of Andorra and Monaco to the list of regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States because their import requirements are less restrictive than those required for import into the United States and/or because of inadequate surveillance. The interim rule placed restrictions on the importation of ruminants that have been in Andorra, Monaco, or San Marino and meat, meat products, and certain other products of ruminants that have been in Andorra, Monaco, or San Marino. The interim rule was necessary in order to prevent the introduction of bovine spongiform encephalopathy into the United States.

EFFECTIVE DATE: The interim rule became effective on May 29, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective May 29, 2001, and published in the **Federal Register** on June 4, 2001 (66 FR 29899–29900, Docket No. 01–029–1), we amended 9 CFR part 94 by adding the Republic of San Marino and the independent principalities of Andorra and Monaco to the list of regions that present an undue risk of introducing bovine spongiform encephalopathy (BSE) into the United States because their import requirements are less restrictive than those required for import into the United States and/or because of inadequate surveillance. That action was necessary on an emergency basis to prevent the introduction of BSE into the United States.

Comments on the interim rule were required to be received on or before August 3, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 66 FR 29899–29900 on June 4, 2001.

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80 and 371.4.

Done in Washington, DC, this 6th day of December 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–30601 Filed 12–10–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–032–2]

Prohibition of Beef From Argentina

AGENCY: Animal and Plant Health inspection Service, USDA

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by removing the provisions for the importation of fresh (chilled or frozen) beef from Argentina and by removing the exemptions that allowed cured or cooked beef to be imported from Argentina under certain conditions without meeting the requirements of the regulations regarding cured and cooked meat from regions where rinderpest or foot-and-mouth disease exists. We took those actions after the existence of foot-and-mouth disease was confirmed in Argentina. The effect of the interim rule was to prohibit the importation of any fresh (chilled or frozen) beef from Argentina and to prohibit the importation of any cooked or cured beef from Argentina that does not meet the requirements of the regulations regarding cured and cooked meat from regions where rinderpest or foot-and-mouth disease exists. We took those actions as an emergency measure to protect the livestock of the United States from foot-and-mouth disease.

DATES: The interim rule became effective on February 19, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on February 19, 2001, and published in the **Federal Register** on June 4, 2001 (66 FR 29897–29899, Docket No. 01–032–1), we amended the regulations in 9 CFR part 94 by removing the provisions for the importation of fresh (chilled or frozen) beef from Argentina and by removing the exemptions that allowed cured or cooked beef to be imported from Argentina under certain conditions without meeting the requirements of the regulations regarding cured and cooked meat from regions where rinderpest or foot-and-mouth disease exists. The effect of that action was to prohibit the importation of any fresh (chilled or frozen) beef from Argentina and to prohibit the importation of any cooked or cured beef from Argentina that does not met the requirements of the regulations regarding cured and cooked meat from regions where rinderpest or foot-and-mouth disease exists.

Comments on the interim rule were required to be received on or before August 3, 2001. We received one comment, which supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 66 FR 29897–29899 on June 4, 2001.

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 6th day of December 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–30602 Filed 12–10–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–008–2]

Change in Disease Status of Germany, Italy, and Spain Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that added Germany, Italy, and Spain to the list of regions where bovine spongiform encephalopathy (BSE) exists because the disease had been detected in native-born animals in those regions. Germany, Italy, and Spain had already been listed among the regions that present an undue risk of introducing BSE into the United States, so the effect of the interim rule was a continued restriction on the importation of ruminants that have been in Germany, Italy, or Spain and meat, meat products, and certain other products of ruminants that have been in Germany, Italy, or Spain. The interim rule was necessary in order to update the disease status of Germany, Italy, and Spain regarding BSE.

EFFECTIVE DATE: The interim rule became effective on April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 30, 2001, and published in the **Federal Register** on May 4, 2001 (66 FR 22425–22426, Docket No. 01–008–1), we amended the regulations in 9 CFR part 94 by adding Germany, Italy, and Spain to the list of regions where bovine spongiform encephalopathy (BSE) exists. Germany, Italy, and Spain had previously been listed in § 94.18(c)(2) as regions that present an undue risk of introducing BSE into the United States. However, due to the detection of BSE in native-born animals in those regions, the interim rule was necessary to update the disease status of Germany, Italy, and Spain regarding BSE.

Comments on the interim rule were required to be received on or before July 3, 2001. We received one comment by

that date from a foreign agricultural official. The commenter indicated that the actions taken in the interim rule were consistent with the actions taken by his government. The commenter did not raise any objections to the interim rule.

Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 66 FR 22425–22426 on May 4, 2001.

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 6th day of December 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–30599 Filed 12–10–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81–ASW–27; Amendment 39–12555; AD 81–18–01 R1]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A, 206B, 206A–1, 206B–1, 206L, and 206L–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD) for Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206A–1, 206B–1, 206L, and 206L–1 helicopters that currently establishes a retirement life for the main rotor trunnion (trunnion) based on hours time-in-service (TIS). This amendment retains those requirements but revises the AD to remove the trunnion, part number (P/N) 206–011–120–103, from the applicability. This amendment is prompted by the issuance of another AD for the BHTI Model 206L and 206L–1 helicopters that requires a different method of calculating the retirement life for the trunnions. The actions specified by this AD are intended to prevent failure of the trunnion due to fatigue cracks and subsequent loss of control of the helicopter.

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by revising AD 81–18–01, Amendment 39–4192 (46 FR 42651, August 24, 1981), which applies to BHTI Model 206A, 206B, 206A–1, 206B–1, 206L, and 206L–1 helicopters, was published in the **Federal Register** on September 13, 2001 (66 FR 47600). The action proposed to revise AD 81–18–01 to remove the trunnion, P/N 206–011–120–103, from the applicability so that the trunnions on BHTI Model 206L series helicopters would only be affected by the RIN retirement life as required by AD 99–17–19 (64 FR 45433, August 20, 1999). The BHTI Model 206L and 206L1 helicopters are included in this AD because the other trunnions affected by the AD may be installed on these helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that since the requirements of the AD are not changed and fewer helicopters of U.S. registry will be affected by this AD revision, there will be no additional cost impact from the AD revision on U.S. operators.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4192 (46 FR 42651, August 24, 1981), and by adding a new airworthiness directive (AD),

Amendment 39–12555, to read as follows:

81–18–01 R1 Bell Helicopter Textron, Inc.: Amendment 39–12555. Docket No. 81–ASW–27. Revises AD 81–18–01, Amendment 39–4192, Docket No. 81–ASW–27.

Applicability: Model 206A, 206B, 206A–1, 206B–1, 206L, and 206L–1 helicopters, with main rotor trunnion (trunnion), part number (P/N) 206–010–104–3, 206–011–113–001, 206–011–120–001, or 206–011–113–103, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the trunnion due to fatigue cracks, accomplish the following:

(a) Any trunnion, P/N 206–011–120–001, with 1100 or more hours time-in-service (TIS) must be retired from service within the next 100 hours TIS.

(b) Any trunnion, P/N 206–011–120–001, with less than 1100 hours TIS must be retired from service on or before attaining 1200 hours TIS.

(c) Any trunnion, P/N 206–010–104–3 and 206–011–113–001, with 2300 or more hours TIS must be retired from service within the next 100 hours TIS.

(d) Any trunnion, P/N 206–010–104–3 and 206–011–113–001, with less than 2300 hours TIS must be retired from service on or before attaining 2400 hours TIS.

(e) Any trunnion, P/N 206–011–113–103, with 4700 or more hours TIS must be retired from service within the next 100 hours TIS.

(f) Any trunnion, P/N 206–011–113–103, with less than 4700 hours TIS must be retired from service on or before attaining 4800 hours TIS.

(g) The retirement times, for the trunnions, established by this AD, are as follows:

P/N	Service life hours TIS
206–011–120–001	1200
206–010–104–3	2400
206–011–113–001	2400
206–011–113–103	4800

Note 2: The FAA issued AD 99–17–19 (64 FR 45433, August 20, 1999) to establish a retirement life for trunnion, P/N 206–011–120–103.

(h) This AD revises the Limitations section of the maintenance manual by establishing a retirement life of 1200 hours TIS for trunnion, P/N 206–011–120–001; 2400 hours TIS for P/N 206–010–104–3 and 206–011–113–001; and 4800 hours TIS for P/N 206–011–113–103.

Note 3: Bell Helicopter Textron Alert Service Bulletins 206–80–7 and 206L–80–9, both Revision B, and dated October 15, 1980, pertain to the subject of this AD.

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

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

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

(k) This amendment becomes effective on January 15, 2002.

Issued in Fort Worth, Texas, on November 30, 2001.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–30498 Filed 12–10–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–46–AD; Amendment 39–12556; AD 2001–25–03]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Models SR20 and SR22 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cirrus Design Corporation (CDC) Models SR20 and SR22 airplanes. This AD requires you to inspect one time for understrength rivets on the elevator torque tube and rudder hinge and replace any understrength rivets. This AD is the result of CDC notifying FAA that understrength rivets were mixed in production supplies. The actions specified by this AD are intended to detect and replace understrength rivets in the elevator and rudder, which could result in failure of the control surfaces. Such failure could lead to a loss of control of the airplane in flight.

DATES: This AD becomes effective on December 17, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of December 17, 2001.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before January 24, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811, telephone: (218) 529–7202, facsimile: (218) 727–2148. You may download service information from <*http://www.cirrusdesign.com/sb/*>. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory J. Michalik, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Room 107, Des Plaines, IL 60018, telephone: (847) 294–7135; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

CDC notified FAA that understrength rivets were mixed with production supplies of the type design approved rivets. The understrength rivet is of a softer alloy and has less strength than the rivet required by type design. Internal inspection by CDC has shown that the wrong rivets may be installed on as many as 143 airplanes.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not corrected, could result in failure of the control surfaces. Such failure could lead to a loss of control of the airplane in flight.

Is There Service Information That Applies to This Subject?

CDC has issued these service bulletins:

—Cirrus Design Service Bulletin SB 20–55–06, issued November 27, 2001; and

—Cirrus Design Service Bulletin SB 22–55–03, issued November 27, 2001.

The service bulletins include procedures for:

—Inspecting rivet installations for understrength rivets; and

—Replacing understrength rivets on the elevator torque tube and rudder hinge.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other CDC Models SR20 and SR22 airplanes of the same type design;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the actions in the previously referenced service bulletins.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in failure of the control surfaces which could lead to a loss of control of the airplane in flight, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–46–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2001–25–03 Cirrus Design Corporation: Amendment 39–12556; Docket No. 2001–CE–46–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
SR20	1134 through 1159.
SR22	0003 through 0119.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace understrength rivets in the elevator and rudder, which could result in failure of the control surfaces. Such failure could lead to a loss of control of the airplane in flight.

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

Actions	Compliance	Procedures
(1) Inspect for understrength rivets on the elevator torque tube and rudder hinge.	Within the next 10 hours time-in-service after December 17, 2001 (the effective date of this AD).	For Model SR 20 airplanes, follow the ACCOMPLISHMENT INSTRUCTIONS section in Cirrus Design Service Bulletin SB 20–55–06, issued November 27, 2001. For Model SR 22 airplanes, follow the ACCOMPLISHMENT INSTRUCTIONS section in Cirrus Design Service Bulletin SB 22–55–03, issued November 27, 2001.
(2) If an understrength rivet is found, replace it with a new rivet, part number MS20470AD4, or FAA-approved equivalent part number.	Before further flight after the inspection referenced in paragraph (d)(1) of this AD.	For Model SR 20 airplanes, follow the ACCOMPLISHMENT INSTRUCTIONS section in Cirrus Design Service Bulletin SB 20–55–06, issued November 27, 2001. For Model SR 22 airplanes, follow the ACCOMPLISHMENT INSTRUCTIONS section in Cirrus Design Service Bulletin SB 22–55–03, issued November 27, 2001.
(3) Do not install part number MS20470A4 rivet	As of December 17, 2001 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Chicago ACO, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Gregory J. Michalik, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Room 107, Des Plaines, IL 60018 telephone: (847) 294–7135; facsimile: (847) 294–7834.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cirrus Design Service Bulletin No. SB 20–55–06, issued November 27, 2001, and Cirrus Design Service Bulletin No. SB 22–55–03, issued November 27, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811, telephone: (218) 529–7202, facsimile: (218) 727–2148. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 17, 2001.

Issued in Kansas City, Missouri, on December 4, 2001.

Dorenda Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30423 Filed 12–10–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–27–AD; Amendment 39–12554; AD 2001–25–02]

RIN 2120–AA64

Airworthiness Directives; Enstrom Helicopter Corporation Model TH–28 and 480 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Enstrom Helicopter Corporation (EHC) Model TH–28 and 480 helicopters. This AD requires establishing a life limit for certain upper and lower main rotor hub plates of 5000 hours time-in-service (TIS), creating a component history card or equivalent record, and replacing each main rotor hub plate (hub plate) having 5000 or more hours TIS with an airworthy hub plate. This AD is prompted by a recent reliability-based stress analysis that indicates a 5000-hour TIS life limit should be imposed on certain hub plates. The actions specified by this AD are intended to prevent failure of a hub plate, loss of control of the main rotor, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph McGarvey, Fatigue Specialist, FAA, Chicago Aircraft Certification Office, Airframe and Administrative Branch, 2300 East Devon Ave., Des Plaines, Illinois 60018, telephone (847) 294–7136, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for EHC Model TH–28 and 480 helicopters was published in the **Federal Register** on September 18, 2001 (66 FR 48102). That action proposed establishing a life limit of 5000 hours TIS for both upper and lower hub plates, part number (P/N) 28–14280–1 and 28–14281–1. Also proposed was replacing hub plates, P/N 28–14280–1 and 28–14281–1, having 5000 or more hours TIS with airworthy hub plates.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to replace the hub plates, and that the average labor rate is $60 per work hour. Creating a component history or equivalent record

would take approximately 2 hours. Required parts will cost approximately $5350 to install hub plates, P/N 28–14280–3 and 28–14281–3 and $5000 to install hub plates, P/N 28–14280–5 and 28–14281–5, per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $24,280 maximum, assuming that all hub plates are replaced and that hub plates, P/N 28–14280–3 and 28–14281–3, are installed.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–25–02 Enstrom Helicopter Corporation: Amendment 39–12554. Docket No. 2001–SW–27–AD.

Applicability: Model TH–28 and 480 helicopters, with upper hub plate, part number (P/N) 28–14280–1, and lower hub plate, P/N 28–14281–1, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a hub plate, loss of control of the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 30 days after the effective date of this AD, for upper hub plate, P/N 28–14280–1, and for lower hub plate, P/N 28–14281–1, create a component history card or equivalent record, and determine the total hours time-in-service (TIS). Thereafter, record the hours TIS for each hub plate and replace each hub plate having 5000 or more hours TIS as follows:

(1) Install hub plates, P/N 28–14280–3 and 28–14281–3, on helicopters with main rotor damper, P/N 28–14375–8.

(2) Install hub plates, P/N 28–14280–5 and 28–14281–5, on helicopters with main rotor damper, P/N 28–14375–10.

(b) This AD revises the Limitations section of the applicable maintenance manual by establishing a life limit of 5000 hours TIS for the upper hub plate, P/N 28–14280–1, and for the lower hub plate, P/N 28–14281–1.

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

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

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

(e) This amendment becomes effective on January 15, 2002.

Issued in Fort Worth, Texas, on November 30, 2001.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–30499 Filed 12–10–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 010607148–1277–02]

RIN 0691–AA42

International Services Surveys: BE–48, Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises regulations for the BE–48, Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

The BE–48 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The data are needed to support U.S. trade policy initiatives; compile the U.S. international transactions, national income and product, and input-output accounts; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The revised rule raises the exemption level for the 2001 annual survey to $2 million in either reinsurance premiums, received or paid; reinsurance losses, paid or recovered; primary insurance premiums received; or primary insurance losses paid, from $1 million on the previous (2000) survey. Raising the exemption level will reduce respondent burden, particularly for small companies.

EFFECTIVE DATE: This final rule will be effective January 10, 2002.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the September 5, 2001, **Federal Register**, volume 66, No. 172, 66 FR 46407–46408, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–48, Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies with Foreign Persons. No comments on the proposed

rule were received. Thus, this final rule is the same as the proposed rule.

This final rule amends 15 CFR part 801 by revising Section 801.9(b)(4)(ii) to set forth revised reporting requirements for the BE–48 Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies with Foreign Persons. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that the President shall, to the extent he deems necessary and feasible—* * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * * . In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The major purposes of the survey are to monitor trade in services; to support U.S. trade policy initiatives; compile the U.S. international transactions, national income and product, and input-output accounts; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

BEA will conduct the BE–48 annual survey for the reporting year 2001. The BE–48 estimates will cover the universe of reinsurance and other insurance transactions covered by the survey. Reporting is required from U.S. persons with reinsurance premiums, received or paid; reinsurance losses, paid or recovered; primary insurance premiums received; or primary insurance losses paid, in excess of $2 million during the reporting year. Respondents meeting these criteria must supply data on the amount of their reinsurance premiums, received or paid; reinsurance losses, paid or recovered; primary insurance premiums received; or primary insurance losses paid, disaggregated by county. Respondents that have covered transactions of $2 million or less during the reporting year are asked to provide voluntary estimates of their total premiums or losses of reinsurance and other insurance transactions.

Executive Order 12866

This final rule is not significant for purposes of E.O. 12866.

Executive Order 13132

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

Paperwork Reduction Act

The collection of information required in this final rule has been approved by the Office of Management and Budget under the Paperwork Reduction Act. Notwithstanding any other provisions 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0016) has been displayed.

The survey is expected to result in the filing of reports, containing mandatory or voluntary data, from about 325 respondents. The average burden for completing the BE–48—both the mandatory and voluntary sections—is estimated to be 4 hours. thus, the total respondent burden of the survey is estimated at 1,300 hours (325 respondents times 4 hours average burden). The actual burden will vary from reporter to reporter, depending upon the number of their reinsurance and other insurance transactions and the ease of assembling the data. Thus, it may range from 1 hour for a reporter that has a small number of reinsurance and other insurance transactions and easily accessible data, or that reports only in the voluntary section of the form, to 20 hours for a very large reporter that engages in a large number of reinsurance and other insurance transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0016, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. The reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The BE–48 annual survey will be required only from reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The BE–20 benchmark survey will be required only from U.S. persons with sales to, or purchases from, unaffiliated foreign persons in excess of $1 million during the reporting year, in a covered service; the exemption level for the previous benchmark survey, covering 1996, was $500,000. Thus, the exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction, often with a single partner country; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Balance of payments, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: November 13, 2001.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 860 as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, Comp., p. 348).

2. Section 801.9(b)(4)(ii) is revised to read as follows:

§ 801.9 Reports required.

(b) * * *

(4) * * *

(ii) *Exemption.* A. U.S. person otherwise required to report is exempt if, with respect to transactions with foreign persons, each of the following

six items were $2 million or less in the reporting period: Reinsurance premiums received, reinsurance premiums paid, reinsurance losses paid, reinsurance losses recovered, primary insurance premiums received, and primary insurance losses paid. If any one of these items is greater than $2 million in the reporting period, a report must be filed.

[FR Doc. 01–30509 Filed 12–10–01; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 010724189–1276–02]

RIN 0691–AA41

International Services Surveys: BE–20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises regulations for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE–20 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The data are needed to support U.S. trade policy initiatives; compile the U.S. international transactions, national income and product, and input-output accounts; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The rule raises the exemption level for the 2001 benchmark survey to $1 million in covered sales or purchases transactions, from $500,000 on the previous (1996) survey. Raising the exemption level will reduce respondent burden, particularly for small companies. The rule also: creates new categories for other trade-related services, auxiliary insurance services, and waste treatment and depollution services; adds coverage of transcription services to ''other'' private services; and amends several other service categories. These changes will close some statistical gaps in the coverage of cross-border services transactions and bring the survey into better compliance with international standards for compilation of statistics on trade in services.

The changes to services that have been reported in past benchmark surveys and the types of new services to be reported reflect BEA's experience in collecting data on selected services transactions over the past 15 years and the growth of new services in the global economy.

EFFECTIVE DATE: This final rule will be effective January 10, 2002.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the August 28, 2001, **Federal Register**, volume 66, No. 167, 66 FR 45219–45221, BEA published a notice or proposed rulemaking setting forth revised reporting requirements for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule. This final rule amends 15 CFR part 801 by revising § 801.10 to set forth revised reporting requirements for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that the President shall, to the extent he deems necessary and feasible—* * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *''. In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The major purposes of the survey are to monitor trade in services; to support U.S. trade policy initiatives; compile the U.S. international transactions, national income and product, and input-output accounts; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

BEA will conduct the BE–20 benchmark survey for the reporting year 2001. The BE–29 estimates will cover the universe of transactions covered by the survey. Reporting is required from U.S. persons who have sales to or purchases from unaffiliated foreign persons in a covered service in excess of $1 million during the reporting year. Respondents meeting these criteria must supply data on the amount of their sales or purchases for each covered type of service, disaggregated by country. Respondents that have covered transactions of $1 million or less during the reporting year are asked to provide voluntary estimates of their total sales or purchases of each type of covered service.

Executive Order 12866

This final rule is not significant for purposes of E.O. 12866.

Executive Order 13132

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

Paperwork Reduction Act

The collection of information required in this final rule has been approved by the Office of Management and Budget under the Paperwork Reduction Act. Notwithstanding any other provisions 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 Paperwork Reduction Act unless that collection displays a current valid OMB Control Number; such a Control Number (0608–0058) has been displayed.

The survey is expected to result in the filing of reports, containing mandatory or voluntary data, from about 1,100 respondents. The average burden for completing the BE–20—both the mandatory and voluntary sections—is estimated to be 12 hours. Thus, the total respondent burden of the survey is estimated at 13,200 hours (1,100 respondents times 12 hours average burden). The actual burden will vary from to reporter, depending upon the number and variety of their services transactions and the ease of assembling the data. Thus, it may range from 4 hours for a reporter that has a small number and variety of transactions and easily accessible data, or that reports only in the voluntary section of the form, to 500 hours for a very large reporter that engages in a large number and variety of services transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0058, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. U.S. persons with reinsurance premiums, received or paid; reinsurance losses, paid or recovered; primary insurance premiums received; or primary insurance losses paid, with foreign persons in excess of $2 million during the reporting year; the exemption level for the previous survey, covering 2000, was $1 million. Thus, the exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of reinsurance of other insurance transaction, often with a single partner country; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Balance of payments, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: November 13, 2001.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 860 as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.10 is revised to read as follows:

§ 801.10 Rules and regulations for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, will be conducted covering companies' 2001 fiscal year and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–20 survey are given in this section. More detailed instructions and descriptions of the individual types of services covered are given on the report form itself.

(a) The BE–20 survey consists of two parts and seven schedules. Part I requests information needed to determine whether a report is required and which schedules apply. Part II requests information about the reporting entity. Each of the seven schedules covers one or more types of services and is to be completed only if the U.S. Reporter has transactions of the type(s) covered by the particular schedule.

(b) Who must report—(1) Mandatory reporting. A BE–20 report is required from each person who had transactions (either sales or purchases) in excess of $1 million with unaffiliated foreign persons in any of the services listed in paragraph (c) of this section during its fiscal year covered by the survey.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgement of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed records search. Because the $1 million threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(ii) Reporters who file pursuant to this mandatory reporting requirement must complete Parts I and II of form BE–20 and all applicable schedules. The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) on line 1 of the schedule. In addition, except for sales of merchanting services, these amounts must be distributed below line 1 to the country(ies) involved in the transaction(s). For sales of merchanting services, the data by individual foreign country are not required to be reported, although these data may be reported voluntarily.

(iii) Application of the $1 million exemption level to each covered service is indicated on the schedule for that particular service. It should be noted that an item other than sales or purchases may be used as the measure of a given service for purposes of determining whether the threshold for mandatory reporting of the service is exceeded.

(2) *Voluntary Reporting.* If, during the fiscal year covered, the U.S. person's total transactions (either sales or purchases) in any of the types of services listed in paragraph (c) of this section are $1 million or less, the U.S. person is requested to provide an estimate of the total for each type of service.

(i) Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search. Because the $1 million threshold applies separately to sales and purchases, the voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(ii) The amounts of transactions reportable on a particular schedule are to be entered in the appropriate column(s) in the voluntary reporting section of the schedule; they are not required to be disaggregated by country. Reporters filing voluntary information only should also complete Parts I and II of the form.

(3) Any U.S. person that receives the BE–20 survey form from BEA, but is not reporting data in either the mandatory or voluntary section of the form, must nevertheless complete and return the Exemption claim included with the form to BEA. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary followup contact.

(c) *Covered types of services.* Only the services listed in this paragraph are covered by the BE–20 survey. Other services, such as transportation and reinsurance, are not covered. Covered services are Agricultural services; research, development, and testing services; management, consulting, and public relations services; management of health care facilities; accounting auditing, and bookkeeping services; legal services; educational and training services; mailing, reproduction, and commercial art; employment agencies and temporary help supply services;

industrial engineering services; industrial-type maintenance, installation, alteration, and training services; performing arts, sports, and other live performances, presentations, and events; sale and purchase of rights to natural resources, and lease bonus payments; use or lease of rights to natural resources, excluding lease bonus payments; disbursements to fund news-gathering costs of broadcasters; disbursements to fund news-gathering costs of print media; disbursements to fund production costs of motion pictures; disbursements to fund production costs of broadcast program material other than news; disbursements to maintain government tourism and business promotion offices; disbursements for sales promotion and representation; disbursements to participate in foreign trade shows (purchases only); premiums paid on purchases of primary insurance; losses recovered on purchases of primary insurance; construction services (purchases only); engineering, architectural, and surveying services (purchases only); mining services (purchases only); merchanting services (sales only); financial services (purchases only, by companies or parts of companies that are not financial services providers); advertising services; computer and data processing services; data base and other information services; telecommunications services; operational leasing services; other trade-related services; auxiliary insurance services; waste treatment and depollution services; and ''other'' private services. ''Other'' private services covers transactions in the following types of services: Language translation services, salvage services, security services account collection services, satellite photograph and remote sensing/satellite imagery services, space transport (includes satellite launches, transport of goods and people for scientific experiments, and space passenger transport), and transcription services.

[FR Doc. 01–30508 Filed 12–10–01; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8966]

RIN 1545–AT47

Effect of the Family and Medical Leave Act on the Operation of Cafeteria Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on October 17, 2001 (66 FR 52675). These regulations relate to cafeteria plans that reflect changes made by the Family and Medical Leave Act of 1993 (Act).

DATES: These corrections are effective October 17, 2001.

FOR FURTHER INFORMATION CONTACT: Shoshanna Chaiton, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 125 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8966) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, final regulations (TD 8966), (FR Doc. 01–25909), published on October 17, 2001 (66 FR 52675) is corrected as follows:

§ 1.125–3 [Corrected]

On page 52677, column 3, § 1.125–3, line 3, the language ''Family and Medical Leave Act (FMLA)'' is corrected to read ''Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 *et seq.*,''

On page 52677, column 3, § 1.1253, Q–1, lines 4 and 5, the language ''when taking unpaid Family and Medical Leave Act (FMLA), 29 U.S.C., is corrected to read ''when taking unpaid FMLA, 29 U.S.C.''

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 01–30621 Filed 12–10–01; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2001–7A]

Disruption or Suspension of Postal or Other Transportation or Communications Services

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations; Request for comments; Correction.

SUMMARY: On December 4, 2001, the Copyright Office published an interim regulation addressing the effect of a general disruption or suspension of postal or other transportation or communications services. This document makes corrections to that interim regulation.

EFFECTIVE DATE: December 11, 2001.

FOR FURTHER INFORMATION CONTACT: Sandra L. Jones, Writer Editor, or Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington DC 20024–0400. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office published an interim regulation in the **Federal Register** on December 4, 2001, addressing the effect of a general disruption or suspension of postal or other transportation or communications services on the Office's receipt of deposits, applications, fees, or any other materials, and the assignment of a date of receipt to such materials. This document makes a non-substantial correction to the interim regulation.

In rule RM2001–7 published on December 4, 2001, (66 FR 62942), make the following correction. On page 62944, in the third column, redesignate paragraphs (f)(i) through (iv) as paragraphs (f)(1) through (4).

Dated: December 6, 2001.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 01–30603 Filed 12–10–01; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT057–7216a; FRL–7114–9]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This action approves Connecticut's one-hour Ozone Attainment Demonstration for the Connecticut portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT) severe ozone nonattainment area. EPA is also approving a variety of enforceable commitments associated with the attainment demonstration, Connecticut's post-1999 rate-of-progress (ROP) plan SIP and associated ROP contingency measures, and a reasonably available control measure (RACM) analysis submitted by the state. The post-1999 ROP plan and attainment demonstration establish 2002, 2005 and 2007 volatile organic compound (VOC) and nitrogen oxide (NO_X) motor vehicle emissions budgets for the area for use in transportation conformity. EPA is also approving these budgets.

Along with approving the commitments for the Connecticut portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT) severe ozone nonattainment area, EPA is also approving a modification to the previously approved enforceable commitment associated with the attainment demonstration for the Greater Connecticut ozone nonattainment area. That modification changes the date for submittal of the mid-course review of the attainment status of the one-hour ozone nonattainment area from December 31, 2003 to December 31, 2004.

EFFECTIVE DATE: This rule becomes effective on January 10, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection by appointment weekdays from 9 a.m. to 4 p.m., at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA, and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

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

This supplementary information section is organized as follows:

I. What Connecticut SIP revisions are the topics of this action and what previous action has EPA taken on these SIP revisions?
II. What are the requirements for approval of the attainment demonstration?
III. What comments did EPA receive on the proposed approvals and how have we responded?
IV. Final EPA Action
V. Administrative Requirements

I. What Connecticut SIP Revisions Are the Topics of This Action and What Previous Action Has EPA Taken on These SIP Revisions?

A. Attainment Demonstration and Enforceable Commitments

EPA is approving an attainment demonstration SIP submitted on September 16, 1998 by the Connecticut Department of Environmental Protection (DEP) for the Connecticut portion of the NY–NJ–CT one-hour severe ozone nonattainment area, as modified on February 8, 2000 by an addendum. Connecticut also submitted additional SIP elements for its attainment demonstration on October 15, 2001. All three submittals are discussed in this section.

EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut's portion of the NY–NJ–CT severe area's ozone attainment demonstration on December 16, 1999 (64 FR 70348). In that action, EPA proposed to conditionally approve the ozone attainment demonstration submitted by the state. We identified the following items in the December 16, 1999 rulemaking as conditions upon which we would base our final approval: (1) Submission of adequate motor vehicle emission budgets for both VOC and NO_X; (2) submission of control measures necessary to meet the ROP requirement from 1999 to the attainment year of 2007, including ROP target level calculations for 2002, 2005 and 2007; (3) a commitment to submit additional control measures to make up for the projected need for additional controls to ensure attainment of the one-hour ozone standard by November 2007; and (4) a commitment to perform a mid-course review. EPA also proposed, in the alternative, to disapprove the attainment demonstration if Connecticut did not submit these items. Also, on December 16, 1999, EPA proposed to approve and/or conditionally approve or disapprove in the alternative the attainment demonstration SIPs for nine other areas in the eastern United States (64 FR 70317).

On February 22, 2000 (65 FR 8703), EPA published a notice of availability announcing two guidance memoranda relating to the ten one-hour ozone attainment demonstrations (including the Connecticut portion of the NY–NJ–CT severe area) proposed for approval or conditional approval on December 16, 1999. The guidance memoranda are entitled: ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations,'' dated November 3, 1999, and ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' dated November 30, 1999.

On July 28, 2000 (65 FR 46383), EPA published a notice of supplemental proposed rulemaking relating to the ten one-hour ozone attainment demonstrations (including the Connecticut portion of the NY–NJ–CT severe area) proposed for approval or conditional approval on December 16, 1999. In the supplemental notice, EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. In addition, EPA reopened the comment period to take comment on those two issues and to allow comment on any additional materials that were placed in the dockets for the ten proposed actions close to or after the initial comment period closed on February 14, 2000.

EPA received comments in response to our December 16, 1999 proposal and the supplemental notice. We address the comments relevant to the Connecticut portion of the NY–NJ–CT severe attainment demonstration in section IV below.

On February 8, 2000, Connecticut DEP submitted an addendum to the ozone attainment demonstration for the Connecticut portion of the NY–NJ–CT severe nonattainment area, which contains certain enforceable commitments. The addendum was submitted in response to requirements for full approval EPA articulated in our December 16, 1999 (64 FR 70348) proposed rulemaking on the attainment demonstration SIP. On June 4, 2001, Connecticut DEP submitted a number of outstanding SIP elements for approval via parallel processing. Included in this submittal were proposed revisions to some of the enforceable commitments made on February 8, 2000.

On August 10, 2001 (66 FR 42172), EPA proposed full approval of Connecticut's one hour ozone attainment demonstration for the state's portion of the NY–NJ–CT severe area and of various enforceable commitments. EPA received no comments on its August 10, 2001 proposal to approve the Connecticut one hour ozone attainment demonstration.

On October 15, 2001, Connecticut submitted final versions of the SIP amendments sent to EPA on June 4, 2001.

In this action, EPA is approving the attainment demonstration, the control measures and the final enforceable commitments made by the state. Those enforceable commitments from the February 8, 2000 and October 15, 2001 submittals include: (1) A commitment to perform a mid-course review of the attainment status of the one-hour ozone nonattainment area by December 31, 2004; (2) a commitment to adopt and submit by October 31, 2001 additional necessary regional control measures to offset the shortfall in emission reductions needed to attain the one-hour ozone standard by November 2007; and (3) a commitment to adopt and submit by October 31, 2001, additional necessary intrastate control measures to offset the shortfall in emission reductions needed to attain the one-hour ozone standard by November 2007. With regard to the specific control measures that the state will adopt to offset the shortfall in emission reductions, the Connecticut DEP has committed to adopt and submit: (1) Additional restrictions on VOC emissions from mobile equipment and repair operations and (2) requirements to reduce VOC emissions from certain consumer products.

B. Post-1999 Rate-of-Progress Emission Reduction Plan

The post-1999 ROP plan documents how Connecticut complied with the provisions of section 182(c)(2)(B) of the Act through 2007. This section of the Act requires that states containing certain ozone nonattainment areas develop strategies to reduce emissions of the pollutants that react to form ground level ozone.

EPA is approving the post-1999 ROP emission reduction plan the State of Connecticut submitted on October 15, 2001 for the state's portion of the NY–NJ–CT severe ozone nonattainment area as a revision to Connecticut's SIP. For purposes of meeting the ROP requirements, Connecticut, New York and New Jersey each submitted a plan to reduce emissions within their own portion of the nonattainment area. EPA is taking action today only on the Connecticut portion of the NY–NJ–CT post-1999 plan. EPA will take action on the New York and New Jersey post-99 plans separately. On August 10, 2001 (66 FR 42178), EPA published a proposed rulemaking for the State of Connecticut's proposed post-99 plan that the state submitted for approval via parallel processing on June 4, 2001. EPA received no comments regarding its proposal to approve the Connecticut post-1999 ROP plan.

C. Transportation Conformity Budgets

Transportation conformity is required by section 176(c) of the Clean Air Act (CAA or Act), and EPA's transportation conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. States are required to establish motor vehicle emissions budgets in any control strategy SIP they submit for attainment and maintenance of the national ambient air quality standards.

In the December 16, 1999 proposed rulemaking on the Connecticut attainment demonstration, EPA proposed, in the alternative, to disapprove the attainment demonstration if Connecticut did not submit adequate motor vehicle emissions budgets and a commitment to adopt and submit additional control measures to make up for the projected need for additional controls to ensure attainment of the one-hour ozone standard by November 2007. On February 8, 2000, the Connecticut DEP submitted revisions to the NY–NJ–CT attainment demonstration which contained 2007 motor vehicle emissions budgets for VOC and NO_X, as well as the necessary enforceable commitment.

A public comment period was held on these budgets when they were posted at *www.epa.gov/oms/transp/conform/currsips.htm.* The public comment period began on February 14, 2000, and closed on March 20, 2000. EPA sent a letter to Connecticut DEP on May 31, 2000 finding these budgets adequate for use in transportation conformity determinations. EPA received no public comments during that public comment period.

On June 16, 2000 (65 FR 37778), EPA notified the public that we had found the 2007 VOC and NO_X motor vehicle emission budgets Connecticut submitted on February 8, 2000 adequate for conformity purposes. These budgets became effective on July 3, 2000 (65 FR 37779).When we originally proposed approval of the Connecticut portion of the NY–NJ–CT severe area attainment demonstration on December 16, 1999, however, EPA did receive comments that opposed EPA determining budgets adequate for transportation conformity purposes. EPA responded to all of those comments before determining the 2007 budgets adequate. A copy of our response to comments is available at *http://www.epa.gov/oms/transp/conform/resp_ct.pdf.*

In this notice, EPA is approving into the SIP the 2007 budgets for the Connecticut portion of the NY–NJ–CT severe area. EPA is also approving two enforceable commitments related to the conformity budgets. Those are: (1) a commitment to revise the attainment-level 2007 motor vehicle emissions budgets within one year of the date that EPA releases the final version of our motor vehicle emissions model, MOBILE6; and (2) a commitment to recalculate and submit revised motor vehicle emissions budgets if any additional motor vehicle control measures are adopted to address the shortfall.

We are only approving the 2007 budgets to be used for conformity purposes until Connecticut submits revised 2007 motor vehicle emissions budgets using MOBILE6 and/or revised 2007 budgets associated with mobile source measures to fill the shortfall and we have found them adequate. At that point, our approval of the 2007 budgets will terminate and the new adequate 2007 budgets will apply for conformity purposes. For more information, please see the proposal published on August 10, 2001 (66 FR 42172).

On July 28, 2000 (65 FR 46383), EPA published a notice of supplemental proposed rulemaking relating to ten one-hour ozone attainment demonstrations (including the Connecticut portion of the NY–NJ–CT severe area) proposed for approval or conditional approval on December 16, 1999. In the supplemental notice, EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. In addition, EPA reopened the comment period to take comment on those two issues and to allow comment on any additional materials that were placed in the dockets for the ten proposed actions close to or after the initial comment period closed on February 14, 2000.

On June 4, 2001, Connecticut DEP submitted for parallel processing its proposed post-1999 ROP plan which contains 2002, 2005 and 2007 motor

vehicle emissions budgets for nitrogen oxides (NO_X) and volatile organic compounds (VOCs) for the State's portion of the NY–NJ–CT severe area. The 2007 motor vehicle emissions budgets contained in the Connecticut post-1999 ROP plan match the conformity budgets contained in the state's attainment demonstration submitted on February 15, 2000. The 2002 and 2005 motor vehicle emissions budgets are new budgets established by the post-1999 ROP plan. The following table contains these NO_X and VOC motor vehicle emissions budgets in units of tons per summer day:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS FOR USE IN CONFORMITY

	2002	2005	2007
VOC (tpsd)	15.20	11.42	9.69
NO_X (tpsd)	38.39	29.01	23.68

EPA opened a 30-day public comment period for these budgets on its conformity Web site on August 10, 2001 (see *http://www.epa.gov/otaq/transp/conform/currsips.htm).* The comment period closed on September 10, 2001, and EPA did not receive any comments on these conformity budgets. On November 1, 2001, EPA issued a letter to Connecticut determining that these budgets were adequate for use in transportation conformity determinations. The 2002 and 2005 motor vehicle emissions budgets become effective December 26, 2001.

On October 15, 2001, Connecticut DEP submitted its final post-1999 ROP plan which contains 2002, 2005 and 2007 motor vehicle emissions budgets for nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in final form for the Connecticut portion of the NY–NJ–CT severe area. These budgets are identical to those submitted for parallel processing and posted for comment on EPA's Web site. In this notice, in addition to approving the 2007 motor vehicle emissions budgets, EPA is approving into the SIP the 2002 and 2005 motor vehicle emissions budgets for VOC and NO_X from the post-1999 plan.

D. Reasonably Available Control Measures (RACM)

EPA is approving as a revision to Connecticut's SIP the RACM analysis plan the State of Connecticut finalized on October 15, 2001 for the State's portion of the NY–NJ–CT severe ozone nonattainment area.

On August 10, 2001 (66 FR 42178), EPA published a proposed rulemaking for Connecticut's proposed RACM plan that the state submitted for approval via parallel processing on August 2, 2001. EPA received no comments regarding its proposal to approve the Connecticut RACM plan.

II. What Are the Requirements for Approval of the Attainment Demonstration?

A. Attainment Demonstration and Budgets

On February 8, 2000, Connecticut DEP submitted an addendum to the ozone attainment demonstrations for the Connecticut portion of the NY–NJ–CT severe nonattainment area. Connecticut submitted the addendum in response to EPA's requirements for full approval as explained in our proposed rulemaking on the attainment demonstration SIP. Connecticut DEP held a public hearing on the addendum on January 6, 2000.

The February 8, 2000 addendum contained 2007 VOC and NO_X motor vehicle emissions budgets for the Connecticut portion of the NY–NJ–CT severe nonattainment area. Connecticut calculated the motor vehicle emissions budgets to be consistent with requirements Connecticut is relying on in its attainment demonstration for the Connecticut portion of the NY–NJ–CT severe area. Connecticut also incorporated credit for the Tier 2/sulfur program in calculating the emissions budgets consistent with the November 8, 1999 memorandum entitled ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking'' from Lydia Wegman, Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Office of Mobile Sources. The motor vehicle emissions budgets for 2007 for VOC and NO_X submitted by Connecticut are shown in Table 1.

All States whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. On February 8, 2000, Connecticut submitted a commitment to revise the 2007 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. In this action, EPA is approving this commitment to revise the 2007 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model.

As we proposed in our July 28, 2000 SNPR (65 FR 46383), today's final approval of the budgets contained in the 2007 attainment plan will be effective for conformity purposes only until such time as revised motor vehicle emissions budgets are submitted (pursuant to the commitment to submit revised budgets using the MOBILE6 model within one year of EPA's release of that model) and we have found those revised budgets adequate. We are only approving the attainment demonstration and its current budgets because Connecticut has provided an enforceable commitment to revise the 2007 budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current 2007 budgets only until such time as the revised budgets are found adequate. Those revised 2007 budgets, once found adequate, will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2007 attainment demonstration and its current 2007 budgets because Connecticut has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. Therefore, we are limiting the duration of our approval of the current 2007 budgets only until such time as any such revised budgets are found adequate. Those revised 2007 budgets, once found adequate, will similarly be more appropriate than the budgets we are approving for conformity purposes for the time being.

The Addendum also includes Connecticut's analysis of the future air quality design value for the Connecticut portion of the NY–NJ–CT severe nonattainment area, which is identical to the EPA analysis found in the Technical Support Document to the notice of proposed rulemaking published December 16, 1999. This analysis supports the contention outlined in the notice of proposed rulemaking that additional emission controls beyond the benefits of the Tier 2/Sulfur program are needed for the Connecticut portion of the NY–NJ–CT severe area to demonstrate attainment.

B. Enforceable Commitments to Adopt Additional Control Measures

In our December 16, 1999 proposed conditional approval of Connecticut's ozone attainment demonstration, EPA said we did not believe the attainment analysis submitted at that time for NY–NJ–CT area demonstrates attainment by the year 2007. EPA's analysis to determine how much additional emission reduction is needed before we can approve Connecticut's attainment demonstration showed an ozone shortfall of 5 ppb for the NY–NJ–CT

severe nonattainment. In other words, our analysis predicted that the NY–NJ–CT area would remain 5 ppb over the NAAQS if Connecticut and its neighboring states do not achieve emission reductions beyond those included in the attainment demonstrations submitted by the states of Connecticut, New Jersey and New York. From this 5 ppb shortfall value we developed additional local emission reduction targets, and we recommended that, at a minimum, an additional 3.8% VOC and 0.3% NO_X reduction from base year 1990 inventories would be necessary to approve the attainment demonstration for this area. These additional reductions were to be over and above the CAA measures required for this area and the measures already relied on in the demonstration of attainment. Additionally, since reductions from EPA's Tier 2 tailpipe and low sulfur-in-fuel standards were already included in the EPA analysis, the percent reduction figures were also over and above Tier 2/Sulfur reductions. EPA directed the three states within the nonattainment area to work together to achieve these reductions.

In the February 8, 2000 addendum to the attainment demonstration for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area, Connecticut included enforceable commitments to submit control measures for additional emission reductions to make-up for the shortfall outlined in EPA's December 16, 1999 proposed conditional approval. Specifically, Connecticut committed to: (1) Adopt and submit by December 31, 2000 additional NO_X limits applicable to municipal waste combustors (MWCs); (2) adopt and submit by October 31, 2001 additional necessary regional control measures to offset the shortfall in emission reductions necessary to attain the one-hour ozone standard by November 2007; and (3) adopt and submit by October 31, 2001, additional necessary intrastate control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007.

The final approval of the Connecticut DEP regulation that reduces emissions of NO_X from Municipal Waste Combustors (MWC) below previously required levels was granted by EPA Region I's Regional Administrator on November 9, 2001. The approved MWC rule will be promulgated at 40 CFR 52.370(c)(90). The additional NO_X reductions that will be achieved by this regulation were not assumed in the attainment demonstration modeling submitted by the state and are thus eligible to fill the emission reduction shortfall necessary for attainment. Since we have already approved this rule, we will not take action on the February 8, 2000 commitment regarding the MWC rule.

In our August 10, 2001 proposed full approval rulemaking notice on the attainment demonstration, we indicated that the shortfall in emission reductions for the Connecticut portion of the nonattainment area was 5.3 tpsd of VOC and 0.5 tpsd of NO_X. Due to a correction we made to Connecticut's estimate of base year VOC emissions from architectural and industrial maintenance (AIM) coatings, the VOC shortfall is now considered to be 5.4 tpsd. In its October 15, 2001 submittal, Connecticut DEP outlines how the individual strategies it is committing to pursue will be sufficient to achieve reductions that will eliminate the shortfall.

In its June 4, 2001 submittal to EPA, Connecticut articulated that it has narrowed the list of further possible control measures for filling the shortfall to those for which model rules were developed by the Ozone Transport Commission (OTC). The OTC model rules include measures to reduce VOC from consumer products, portable fuel containers, AIM coatings, mobile equipment refinishing and repair operations, and solvent cleaning operations. The OTC model rules also include additional NO_X controls for fuel combustion sources, including gas turbines, stationary reciprocating engines, and industrial boilers. These model rules would achieve reductions beyond those already assumed in Connecticut's SIP for some of these measures. At the public hearing Connecticut DEP held on July 10, 2001, the DEP solicited public comment on each of the model rules to determine those that may be most appropriate for adaptation into Connecticut's regulations to address the shortfalls EPA identified for attaining the one-hour ozone standard and to make progress toward attaining the eight-hour ozone standard.

Subsequent to the public hearing, the Connecticut DEP has decided it would pursue adoption of: (1) additional restrictions on VOC emissions from mobile equipment refinishing and repair operations; and (2) requirements to reduce VOC emissions from certain consumer products. In its October 15, 2001 submittal, Connecticut is committing to pursue adoption of regulations for these two categories. Connecticut has proposed a rule on mobile equipment refinishing and repair operations and held a public hearing on it on September 15, 2001. The rule is scheduled to be adopted by the end of 2001. Connecticut DEP has begun the adoption process for the rule covering consumer products. Both of these rules will be adopted and implemented within a time period fully consistent with the NY–NJ–CT nonattainment area attaining the standard by its 2007 attainment date. In today's action, EPA is approving the enforceable commitments Connecticut DEP submitted to adopt control measures to offset the shortfall in emission reductions necessary to attain the one-hour ozone standard by November 2007.

C. Mid-Course Review

A mid-course review (MCR) for the NY–NJ–CT severe area is a reassessment of modeling analyses and more recent monitored data to determine if the prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable.

EPA believes that a commitment to perform a MCR is a critical element of the weight of evidence (WOE) analysis for the attainment demonstration on which EPA proposed action in December 1999. To approve the attainment demonstration SIP for the Connecticut portion of the New York City area, EPA believes that the state must have an enforceable commitment to perform a MCR.

Originally, the Connecticut DEP submitted an enforceable commitment with its attainment demonstration on September 16, 1998. The commitment made was to submit a MCR in the 2001/2002 time frame and an additional MCR in 2005. In our December 16, 1999 proposed conditional approval, EPA suggested that Connecticut revise its commitment to provide for the MCR immediately following the 2003 ozone season, so that the MCR would reflect regional NO_X reductions that were scheduled to occur by May 1, 2003 under the NO_X SIP call. Connecticut included this commitment in its February 8, 2000 submittal.

In the summer of 2000, the Court of Appeals for the D.C. Circuit issued an order providing that EPA could not mandate that states require source compliance with rules adopted to meet the SIP call before May 2004. Thus, consistent with more recent advice from us, and with the original intent that the MCR reflect the SIP call reductions, Connecticut has revised the submittal date of the MCR from December 31, 2003 to December 31, 2004. This new due date, and the logic behind its choice, also effects the Greater Connecticut ozone nonattainment area.

We have reviewed the commitment and approve this SIP revision for both the Connecticut portion of the NY–NJ–CT severe nonattainment area and the Greater Connecticut area. This new date is consistent with the EPA recommendation for submittal of the mid-course review on the attainment demonstration and should provide the most robust assessment of whether the state is on-track to attain the 1-hour ozone standard by its attainment date.

D. Post-1999 Rate-of-Progress Plan

This section is organized as follows:

1. What action is EPA taking today?

2. What are Connecticut's target emission levels for VOC and NO_X, and will the state's emissions be below these targets?

3. What control strategy will Connecticut use to meet its emission target levels?

4. How did Connecticut meet the contingency measure requirement?

1. What Action Is EPA Taking Today?

EPA is approving the post-1999 rate-of-progress (ROP) emission reduction plan the State of Connecticut submitted for the state's portion of the NY–NJ–CT severe ozone nonattainment area as a revision to Connecticut's SIP. For purposes of meeting the ROP requirements, Connecticut, New York and New Jersey each submitted a plan to reduce emissions within their own portion of the nonattainment area. EPA is taking action today only on the Connecticut portion of the NY–NJ–CT post-1999 plan.

The post-1999 ROP plan documents how Connecticut complied with the provisions of section 182 (c)(2)(B) of the Act through 2007. This section of the Act requires that states containing certain ozone nonattainment areas develop strategies to reduce emissions of the pollutants that react to form ground level ozone.

On August 10, 2001 (66 FR 42178), EPA published a proposed rulemaking on the State of Connecticut's ROP demonstration for 2002, 2005 and 2007. EPA received no comments regarding its proposal to approve the Connecticut post-1999 ROP plan.

2. What Are Connecticut's Target Emission Levels for VOC and NO_X, and Will the State's Emissions Be Below These Targets?

Connecticut's 2002, 2005, and 2007 target emission levels are shown in table 2, along with the state's projected, controlled emission levels. These target emission levels represent the maximum amount of emissions that Connecticut can emit in each year, given the state's post-1999 emission reduction requirements.

TABLE 2.—TARGET LEVELS AND PROJECTED, CONTROLLED EMISSIONS

Description	2002 VOC (tpsd)	2002 NO_X (tpsd)	2005 VOC (tpsd)	2005 NO_X (tpsd)	2007 VOC (tpsd)	2007 NO_X (tpsd)
Target Level	94.8	115.2	82.7	114.9	76.8	112.9
Projected Controlled Emissions	89.2	98.2	80.4	83.1	76.8	76.8

The emission targets shown in Table 2 reflect a minor adjustment we made to Connecticut's 1990 emission estimate for AIM coatings, which we discuss in further detail below. This modification does not affect the state's ability to meet the statutory ROP requirement.

3. What Control Strategy Will Connecticut Use To Meet Its Emission Target Levels?

EPA's August 10, 2001 proposed approval action outlined the control strategy that Connecticut used to meet its emission target levels. In summary, the state's control strategy consists of the emission reductions from the continued enforcement of measures EPA approved as part of the State's 15 percent and post-1996 (through 1999) emission reduction plans (64 FR 12015 (March 10, 1999) and 65 FR 62624 (October 19, 2000), respectively), coupled with emission reductions from the following programs: Connecticut's NO_X budget program affecting large point sources; municipal waste combustor (MWC) emission limits; federal non-road engine standards; phase II of the reformulated gasoline program; reductions from the final cut-points for the state's enhanced automobile inspection and maintenance program; reductions from the combined effect of tier II automobile standards and low sulfur in gasoline requirements; and phase I controls on heavy duty diesel engines. All these control measures are approved as part of Connecticut's SIP or are otherwise enforceable under the Act.

We agree with Connecticut's determination of emission reductions from its NO_X and VOC control strategy, with the minor exception of the architectural and industrial maintenance coatings (AIM) category that was part of the state's 15 percent plan. We agree with the 20 percent reduction Connecticut applied to its projected emissions for this source category due to a federal rule on these coatings. However, because Connecticut used different emission estimation methodologies to calculate its 1990 AIM emissions (used in development of the target levels) and its 1996 AIM emissions (used to project emissions), EPA concluded that an overstatement of reductions occurred due to these differing emission estimation techniques. To correct this discrepancy, we applied the more accurate 1996 AIM coatings emissions estimation methodology to Connecticut's 1990 base year estimate, and determined that Connecticut's base year emissions (the ''ROP'' inventory) for VOCs should be lowered from 144.0 tpsd to 142.3 tpsd. Inserting the correct 1990 emission estimate into the State's ROP calculation yields the emission target levels shown above in Table 2. It is important to note that correcting this element of Connecticut's baseline inventory has no effect on the choices the state has made in designing its ROP plan and contingency measures. Connecticut has sufficient emission reductions beyond what is required for these SIP elements such that this adjustment simply reduces that surplus slightly.

4. How Did Connecticut Meet the Contingency Measure requirement?

Connecticut has met its contingency measure obligation by using surplus emission reductions generated by the control measures in its post-1999 ROP plan. EPA policy allows use of surplus reductions that will occur in years after the ROP plan from already adopted measures to serve as contingency measures for ROP plans. We are approving Connecticut's demonstration that it meets the contingency measure provision of section 182(c)(9) of the Act, which requires contingency measures for serious and above milestone failures in ozone nonattainment areas classified serious and above.

Connecticut still must meet the contingency measure provision of section 172(c)(9) of the Act, which pertains to failure to attain the ozone standard by the required date, but EPA

is not obligated to approve such measures prior to approving the attainment demonstration. The EPA believes the contingency measure requirement of section 172(c)(9) is independent from the attainment demonstration requirements under sections 172(c)(1) and 182(c)(2)(A). The section 172(c)(9) contingency measure requirement addresses the event that an area fails to attain the ozone NAAQS by the attainment date established in the SIP and has no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS. The attainment SIP provides a demonstration that attainment ought to be reached, but the contingency measure SIP requirement of section 179(c)(9) concerns what is to happen only if attainment is not actually achieved. The EPA acknowledges that contingency measures are an independently required SIP revision, but does not believe that submission of contingency measures is necessary before EPA may approve an attainment SIP.

Connecticut's post-1999 ROP plan states that its large NO_X surplus is sufficient to meet both contingency measure provisions of the Act. However, the State's surplus NO_X reductions can not be used to meet the 179(c)(9) contingency measure requirement because that requirement pertains to a failure to meet the one hour ozone standard by the area's 2007 attainment date, and therefore must consist of measures that are surplus to the measures needed for attainment. The surplus NO_X reductions in Connecticut's ROP plan are not surplus to the measures needed for attainment.

In the event that attainment is not achieved by 2007, there are a number of EPA measures that will achieve significant emission reductions between 2007 and 2009. These include continuing reductions from EPA's Tier 2 tailpipe standards and EPA's standards for a variety of non-road sources. We have analyzed the Connecticut SIP and determined that the contingency obligation would be covered for this area by these measures. More details on EPA's contingency measure analysis are included in the docket for the rulemaking action. While there is not an approved SIP contingency measure that would apply if the state failed to attain, EPA believes that existing federally enforceable measures would provide the necessary substantive relief.

Other specific requirements of post-1999 ROP plans and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. See 66 FR 42178 (August 10, 2001).

E. SIP Elements EPA Approved Between December 16, 1999 and Today

In the NPR for the Connecticut attainment demonstration SIP published on December 16, 1999, EPA stated that it intended to publish, either before or at the same time as publication of final approval of the attainment demonstration, a final approval of Connecticut's VOC RACT rules pursuant to sections 182(b)(2)(A) and (C) of the Clean Air Act, the 9% rate of progress plan through 1999, the post-99 ROP plan, the state opt-in to the National Low Emission Vehicle (NLEV) program, and the NO_X SIP call SIP for the Connecticut portion of the NY–NJ–CT severe area. These measures are needed to fully approve the attainment demonstration.

EPA approved the Connecticut VOC RACT rules pursuant to sections 182(b)(2)(A) and (C) of Clean Air Act on October 19, 2000 (65 FR 62620). EPA approved the Connecticut area's 9% rate of progress plan on October 19, 2000 (65 FR 62624). EPA approved Connecticut's opt-in to the NLEV program on March 9, 2000 (65 FR 12476). EPA approved Connecticut's NO_X SIP call SIP on December 27, 2000 (65 FR 81743). This action approves the post-99 plan for the Connecticut portion of the NY–NJ–CT severe nonattainment area.

Additionally, subsequent to the December 16, 1999 proposal, EPA granted full approval to two other SIP elements in Connecticut. On March 9, 2000 (65 FR 12474), EPA approved Connecticut's Clean Fuel Fleets Substitute Plan as meeting the requirements of Section 182(c)(4) of the Clean Air Act. On October 27, 2000 (65 FR 64357), EPA approved the Connecticut Enhanced Inspection and Maintenance program SIP, converting it from a limited approval under the Clean Air Act to a full approval.

With the submission and approval of the SIP elements mentioned above, Connecticut has in place all of the required elements of the attainment demonstration SIP. As discussed elsewhere in this notice, Connecticut has met all of the requirements for full approval of its attainment demonstration for the Connecticut portion of the NY–NJ–CT severe area, and EPA is approving it today. The New York and New Jersey portions of the area will be the topic of different rulemaking actions.

III. What Comments Did EPA Receive on the Proposed Approvals and How Have We Responded?

As stated above, EPA did not receive comments on its August 10, 2001 proposal for the attainment demonstration, the post-99 plan, the motor vehicle emissions budgets or the RACM analysis. EPA did receive comments from the public on the NPR published on December 16, 1999 (64 FR 70332) for the Connecticut portion of the NY–NJ–CT severe area's ozone attainment demonstration. EPA received comments from Robert E. Yuhnke (Attorney for Environmental Defense and Natural Resources Defense Council), the Midwest Ozone Group, and ELM Packaging Company. EPA also received comments from the public on the supplemental proposed rulemaking published on July 28, 2000 (65 FR 46383), in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. Environmental Defense commented on that supplemental proposal.

Additionally, on November 15, 2001, Environmental Defense submitted comments to EPA concerning several proposals to approve the attainment demonstrations for the New York and New Jersey portions of the NY–NJ–CT severe nonattainment area. These comments were not directed at the Connecticut attainment demonstration and generally discussed only the New York and New Jersey demonstrations in any detail. There was one comment in the letter that specifically focused on the adequacy of Connecticut's commitment to submit enforceable measures to address the emissions reduction shortfall. See Letter from Janea A. Scott and Val Washington to Raymond Werner (November 15, 2001) at section I.d. In section III.D., below, EPA is responding to this comment along with other comments concerning the shortfall measures.

The following discussion summarizes and responds to all of these comments. For convenience, the comments we received on previous NPRs have been grouped into categories.

A. Attainment Demonstrations—Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to

submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that ''[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' As described in more detail below, the EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration ''be based on photochemical grid modeling,'' because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51, appendix W] (Guideline on Air Quality Models).''[1] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * * '' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, appendix W, section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[2]

In 1996, EPA issued guidance[3] to update the 1991 guidance referenced in 40 CFR part 51, appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance[4] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions. The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values

[1] The August 12, 1996 version of ''appendix W to part 51—Guideline on Air Quality Models'' was the rule in efect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

[2] Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA–454/B–95–007, June 1996.

[3] Ibid.

[4] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711, November 1999. Web site: *http://www.epa.gov/ttn/scram.*

(highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions contributed to three design value periods (1988–90, 1989–91 and 1990–92). Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions—those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 3 exceedances in 3 years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above, through the weight of evidence determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each state's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a rollback modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51, appendix W, section 6.2.1.e. provides, ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20% improvement in ozone is needed for the area to reach attainment, it is assumed a 20% reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate

additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: it obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced in Appendix W and does not assume a direct proportional relationship between ozone and its precursors. Lastly, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose the use the November 1999 guidance, ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled,'' in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington, DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment. For Connecticut, between 1990 and 1999 VOC emissions were lowered by 26 percent and NO_X emissions were lowered by 19 percent. These precursor emissions will continue to be reduced within the state, which will help lower ozone both within and downwind of Connecticut. In addition the reduction of precursor emissions in the large metropolitan areas upwind of Connecticut, along with power plant emissions reductions, throughout the eastern USA, will result in attainment of the one-hour NAAQS by 2007 in Connecticut. Air quality trend data for the past 21 years, since 1980, show vast improvement in ozone levels in Connecticut. Over the past twelve to fourteen years, the maximum design value for the ozone monitors in the severe portion of Connecticut has dropped from 201 ppb, in the 1987–1989 time frame (the value used to classify this area in 1991), to 143 ppb based on ozone data from 1999, 2000 and preliminary ozone data from 2001. This is a drop of 58 ppb or 29 percent.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide

for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), States have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with States on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

B. Reliance on NO_X SIP Call and Tier 2

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call. *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000), cert. denied, 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA,* 251 F.3d 1026 (D.C. Cir. 2001) . Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the SIP Call. Moreover, contrary to the commenter's suggestion, the SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2 program for the severe-area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the States to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the EGU growth factor, it is EPA's view that states should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. In fact many states have adopted rules that achieve the full SIP call level reductions by May 1, 2003. Both EPA and the states are moving forward to implement the SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan.*

C. RACM (Including Transportation Control Measures)

Comment: Several commenters stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls.

One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM, nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the state must provide a justification for why they were determined to not be RACM.

Response: After receipt of this comment on the December 16, 1999 proposal, EPA reviewed the initial SIP submittals for the Connecticut portion of the NY–NJ–CT severe area, as well as the other areas for which EPA proposed approval in December 1999, and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA

consequently issued a guidance memorandum providing that these states should address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from States with Severe 1-hour Ozone Nonattainment Area SIPs.'')

The State of Connecticut provided EPA with a draft RACM analysis on August 2, 2001, and finalized that document on October 15, 2001. EPA proposed to approve this SIP as meeting the RACM requirements via parallel processing on August 10, 2001 (66 FR 42172). In the proposal, EPA set forth its interpretation of the RACM requirement. See 66 FR 42182. Based on our review of the RACM submission, EPA proposed that CT had adopted all RACM. EPA received no comments on that proposal. Today, EPA approves the Connecticut RACM analysis as meeting the requirement for adopting RACM for the Connecticut portion of the NY–NJ–CT severe area.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.* EPA has consistently interpreted the Clean Air Act as requiring only such RACM as will provide for expeditious attainment, since we first addressed the issue in guidance issued in 1979. 44 FR 20372, 20375 (April 4, 1979).

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for Connecticut portion of the NY–NJ–CT severe area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, e.g., *http://www.epa.gov/otaq/transp.htm.* In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures-including the kind that the Connecticut portion of the NY–NJ–CT severe area itself evaluated in its RACM analysis—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the Clean Air Act's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment date being approved is as expeditious as practicable.

EPA previously responded to comments concerning the adequacy of MVEBs when EPA took final action determining the budgets adequate and does not address those issues again here. The responses are found at: *http://www.epa.gov/oms/transp/conform/pastsips.htm.*

D. Attainment and Rate of Progress Demonstrations—Approval of Demonstrations That Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future Not Yet Adopted by a State and/or Approved by EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment and rate of progress demonstrations because: (a) Not all of the emissions reductions assumed in the demonstrations have actually taken place, (b) those emission reductions are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) those emission reductions are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP, or (d) the commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

Response: EPA disagrees with the comments, and believes—consistent with past practice—that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[5] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3)

[5] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean,* 670 F. Supp. 1285 (D.N.J. 1987), *aff'd,* 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc.* v. *N.Y. State Dept. of Env. Cons.,* 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, *recon. granted in part,* 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.,* No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments. EPA could make a finding of failure to implement the SIP under section 179(a) of the Act, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposted.

whether the commitment is for a reasonable and appropriate period of time.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Baltimore, and Philadelphia nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For these areas, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with each area's ability to meet its rate-of-progress and attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.,* 62 FR 1150, 1187 (Jan. 8, 1997) (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903 (Apr. 10, 2000) (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326 (Aug. 3, 1998) (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (state implementation plan for New Jersey). Nothing in the Act speaks directly to the approvability of enforceable commitments.[6] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance,* as may be necessary or appropriate to meet the applicable requirement of the Act.'' Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP ''include enforceable emission limitations and such other control measures, means or techniques * * * *as may be necessary or appropriate* to provide for attainment * * * by the applicable attainment date * * *'' (Emphasis added.) The emphasized terms mean that at the time of approval of the plan, the adopted enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment by the attainment date and do not interfere with other requirements such as ROP.

As provided above, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for a nonattainment area such as the Connecticut portion of the NY–NJ–CT severe area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow States to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here, EPA agrees with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. *See NRDC,* 22. F.3d at 1134.

For the Connecticut portion of the NY–NJ–CT severe area, the remaining commitment addresses only a small portion of the emission reductions necessary to attain the standard. Connecticut has adopted all other CAA mandated control programs. Details of these programs are found in section D.3 above. These already adopted programs are achieving the vast majority of the precursor emission reductions necessary for attainment.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This conclusion is supported by the recent recommendation of the Ozone Transport Commission (''OTC'') regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the states will be able to find sources of reductions to meet the shortfall. The states that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 29, 2001 recommended a set of control measures. Currently, the states are working through their adoption processes with respect to those, and in some cases other, control measures. For example Connecticut recently adopted and EPA approved the MWC rule mentioned above, and Connecticut has identified specific measures that should completely address any remaining shortfall.

The third factor, EPA has considered in determining to approve limited commitments for the Connecticut portion of the NY–NJ–CT severe area attainment demonstration is whether the commitment is for a reasonable and appropriate period. EPA recognizes that both the Act and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors—such as the need to consider innovative control strategies—support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the

[6] Section 110(k)(4) provides for ''conditional approval'' of commitments that need not be enforceable. Under that section, a State may commit to ''adopt specific enforceable measures'' within one-year of the conditional approval. Rather than enforcing such commitments against the State, the Act provides that the conditional approval will convert to a disapproval if ''the State fails to comply with such commitment.''

proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes—a fairly ambitious schedule—i.e., until October 31, 2001. As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA ''SIP Call'' provision of the CAA—section 110(k)(5)—which provides states with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the states to submit the measures within 18 months of its proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. See e.g., 64 FR 70348. EPA believed that allowing these states until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007 or the ability of these areas to meet their ROP requirement.

Connecticut did not make the October 31, 2001 submission deadline for all the control measures to make up the shortfall. Connecticut did submit the MWC rule (see section II.B), and Connecticut has started on the SIP process for the remaining measures. These measures will include mobile equipment repair and refinishing regulations and regulations on consumer products. EPA believes that Connecticut is making sufficient progress to support approval of the commitment, because Connecticut will adopt and implement the remaining measures within a time period fully consistent with the NY–NJ–CT severe area attaining the standard by November 15, 2007. Details on Connecticut's progress in addressing the shortfall in emission reductions can be found in the memorandum ''Status of Connecticut's Adoption of Additional Measures to Close the Shortfall Identified in the One-Hour Ozone Attainment Demonstration for the Connecticut Portion of the New York-New Jersey-Connecticut Severe Area'' dated November 29, 2001 located in the docket for this action.

The enforceable commitments submitted for the Connecticut portion of the NY–NJ–CT severe nonattainment area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment and the commitments will not interfere with the area's ability to make reasonable progress under section 182(c)(2)(B) and (d). EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because the state has obligated itself to submit the rules, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, and Section D.3 of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

EPA believes that the Connecticut SIP meets the NRDC consent decree definition of a ''full attainment demonstration.'' The consent decree defines a ''full attainment demonstration'' as a demonstration according to CAA section 182(c)(2). As a whole, the attainment demonstration—consisting of photochemical grid modeling, adopted control measures, an enforceable commitment with respect to a limited portion of the reductions necessary to attain, and other analyses and documentation—is approvable since it ''provides for attainment of the ozone [NAAQS] by the applicable attainment date.'' See section 182(c)(2)(A).

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here. Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the Web site, EPA regional contacts are identified.

F. Attainment Demonstration and Rate of Progress Motor Vehicle Emissions Inventories

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: The Connecticut SIP we are taking final action on is based on the most recent vehicle registration data from 1996, which is the most recent data that was available at the time the SIP was submitted in 2001. The SIP also contains vehicle fleet characteristics that are in the most recent periodic inventory update, which was submitted on March 13, 2000. EPA requires the most recently available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

G. VOC Emission Reductions

Comment: For States that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such a pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively. It is each state's prerogative to specify which measures it will adopt in order to

achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, states may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which states may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected state. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents many of which are not VOCs (http://www.epa.gov/ozone/title6/snap/).

H. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the states are being given full credit for federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [7] that provided that states could claim a 20% reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59, subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20% reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, states have assumed a 20% reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the states to take credit for a 20% emission reductions in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy,[8] many states claimed a 37% reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33% overall nationwide. The 37% emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40%. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36% for previously unregulated areas. Although Connecticut's post-1999 ROP SIP claims a 37 percent reduction from this rule, the large surplus NO_X reductions achieved by Connecticut's ROP plan easily cover the shortfall caused by the minor overestimation of credit from the federal automobile refinishing rule. Additionally, this minor overestimation is not likely to adversely impact Connecticut's attainment demonstration SIP. By taking a 37% reduction instead of a 36% reduction, Connecticut's SIP overstates VOC emission reductions in its severe area by 0.06 tpsd which is not significant when compared to total VOC emissions and VOC emission reductions for the area. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance,[9] states claimed a 20% reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20% reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined, and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule. 63 FR 48819. Thus, while Connecticut did not adopt such regulations, it benefitted from the sale of reformulated products due to the actions of other states to regulate consumer products. In essence, industry reformulated the products covered by the federal consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the states to take credit for a 20% emission reduction for the consumer products rule in their SIPs.

I. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA

[7] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules,'' March 22, 1995, from John S. Seitz, Director, Office of air Quality Planning and Standards for Air Division Directors, Regions I–X.

[8] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' November 27, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[9] ''Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act,'' June 22, 1995, John S. Seitz, Director of OAQPS, to Air Division Directors, Regions I–X.

under obligations set forth in section 110(a)(2)(C) of the Clean Air Act. Once approved by the EPA, there is no need for states to readopt and resubmit these programs with each and every SIP revision required by other sections of the Act. In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration and ROP plan depend on specific state emission control regulations these individual regulations have undergone review by the EPA in past approval actions or, to the extent they are being approved through this action, have undergone review in the current rulemaking.

J. Contingency Measures

Comment: The SIP for the Connecticut portion of the NY-NJ-CT severe ozone nonattainment area does not provide contingency measures to make up for any emission reduction shortfall, either in achievement of ROP milestones or for failure to attain, as required by sections 172(c)(9) and 182(c)(9) of the Clean Air Act.

Response: The Connecticut SIP does provide contingency measures for ROP as required by section 182(c)(9), but does not provide contingency measures for failure to attain as required by section 172(c)(9). The state's ROP contingency plan is discussed in detail in our August 10, 2001 document (66 FR 42172). We are approving Connecticut's demonstration that it meets the contingency measure provision of section 182(c)(9) of the Act, which requires contingency measures for serious and above milestone failures.

Connecticut still must meet the contingency measure provision of section 172(c)(9) of the Act, which pertains to failure to attain the ozone standard by the required date. But EPA is not obligated to approve such measures prior to approving the attainment demonstration, because the contingency measure requirement of section 172(c)(9) is independent from the attainment demonstration requirements under sections 172(c)(1) and 182(c)(2)(A). The section 172(c)(9) contingency measure requirement addresses the event that an area fails to attain the ozone NAAQS by the attainment date established in the SIP and has no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS. The attainment SIP provides a demonstration that attainment ought to be reached, but the contingency measure SIP requirement of section 179(c)(9) concerns what is to happen only if attainment is not actually achieved. The EPA acknowledges that contingency measures are an independently required SIP revision, but does not believe that submission of contingency measures is necessary before EPA may approve an attainment SIP.

Additionally, in the event that attainment is not achieved by 2007 there are a number of EPA measures that will achieve significant emission reductions that the SIP does not rely on or take credit for. These include continuing reductions from EPA's Tier 2 tailpipe standards and EPA's standards for a variety of non-road sources. The EPA has analyzed the Connecticut SIP and has estimated that the contingency obligation would be approximately 3.8 tons per summer day (tpsd) in ozone precursor emission reductions. Reductions from the federal non-road and the Tier 2 tailpipe standards during the time frame contingency measures would need to be implemented for failure to attain (i.e., by May 2009) [10] are estimated to be at least 5.5 tpsd, which would cover the contingency obligation for this area. More details on EPA's contingency measure analysis are included in the docket for the rulemaking action. While there is not an approved SIP contingency measure that would apply if the state failed to attain, EPA believes that existing federally enforceable measures would provide the necessary substantive relief.

K. MOBILE6 and Motor Vehicle Emissions Budgets

Comment 1: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE models are released.

Response 1: The Connecticut attainment demonstration, which relies on Tier 2 emission reduction credit, contains a commitment to revise the 2007 motor vehicle emissions budgets within 1 year after MOBILE6 is released.

Comment 2: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 2: EPA proposed to change its policy in the July 28, 2000 SNPRM (65 FR 46383) to provide that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. EPA is taking final action adopting this revised interpretation in this notice. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

Comment 3: If a State submits additional control measures that affect the motor vehicle emissions budget but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response 3: EPA agrees. The motor vehicle emissions budgets in the Connecticut attainment demonstration reflect the motor vehicle control measures in the attainment demonstration. In addition, Connecticut has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment 4: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response 4: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Connecticut attainment demonstration contains explicitly quantified motor vehicle emissions budgets which EPA has found adequate (65 FR 37778).

Comment 5: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response 5: EPA agrees that if a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Clean Air Act.

Comment 6: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response 6: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise

[10] EPA policy provides that contingency measures should achieve a 3 percent reduction in emissions in the year following an EPA determination of a failure to attain or to meet a progress requirement.

issues about the sufficiency of the attainment demonstration.

Comment 7: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response 7: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 vs. MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, Connecticut has committed to submit new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

Comment 8: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response 8: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum 2-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment 9: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response 9: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

Comment 10: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response 10: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the 1-year option, if desired, or submit a new commitment consistent with the alternative 2-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. Connecticut has committed to revise its budgets within 1 year of MOBILE6's release.

L. Measures for the 1-Hour NAAQS and for Progress Toward 8-Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised 8-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the 1-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the 1-hour standard and that make as much progress toward implementing the 8-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The 1-hour standard remains in effect for all of these areas, and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if it determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the 1-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the 8-hour standard. However, EPA generally believes that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call.

Finally, EPA notes that although the 8-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard.

M. Attainment and Post '99 Rate of Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3% per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have not been met.

The EPA has absolutely no authority to waive the statutory mandate for 3% annual reductions. The statute does not allow EPA to use the NO_X SIP call or 126 orders as an excuse for waiving rate-of-progress (ROP) deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3% annual emission reductions within the downwind nonattainment area.

Response: These comments center on the concern that for many areas, EPA did not propose approval of the post-99 ROP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. For those areas EPA has since proposed approval of the post-99 ROP SIPs. Under no condition is EPA waiving the statutory requirement for an average of 3% annual emission reductions over each 3-year ROP period. In this action EPA is approving the Post-99 plan for the Connecticut portion of the NY–NJ–CT severe area, as achieving 3% average annual reductions over each 3-year period (or 2-year period for 2005–2007) until the area's attainment date. Moreover, EPA has not provided that areas may rely on upwind reductions for purposes of meeting the ROP requirements. Rather, states are relying

on in-state NO_X and VOC measures for meeting the ROP requirement.

IV. Final Action

As described above, EPA does not believe any of the comments we received on the proposals published for the attainment demonstration for the Connecticut portion of the NY–NJ–CT severe area should affect EPA's determination that the SIP is fully approvable. Thus, EPA is approving several SIP revisions that relate to attainment of the one-hour ozone standard in the Connecticut portion of the NY–NJ–CT severe area. The SIP revisions include Connecticut's one-hour ozone attainment demonstration for the state's portion of the NY–NJ–CT severe area, various enforceable commitments, a RACM analysis, and the post-1999 ROP plan. Connecticut's one-hour ozone attainment demonstration includes 2007 motor vehicle emissions budgets, which EPA is approving until new budgets using MOBILE 6 or in conjunction with new mobile source measures to fill the shortfall are submitted and found adequate. Also, EPA is approving the motor vehicle emissions budgets for 2002 and 2005 contained in Connecticut's post-1999 ROP plan for transportation conformity purposes.

The enforceable commitments we are approving include: (1) A commitment to adopt and submit by October 31, 2001 additional necessary regional control measures to offset the shortfall in emission reductions necessary to attain the one-hour ozone standard by November 2007; (2) a commitment to adopt and submit by October 31, 2001 additional necessary intrastate control measures to offset the shortfall in emission reductions necessary to attain the one-hour ozone standard by November 2007; (3) a commitment to adopt and submit additional restrictions on VOC emissions from mobile equipment and repair operations; (4) a commitment to adopt and submit additional requirements to reduce VOC emissions from certain consumer products; (5) a commitment to revise the attainment-level 2007 motor vehicle emissions budgets within one year of the date that EPA releases the final version of their motor vehicle emissions model, MOBILE6; (6) a commitment to recalculate and submit revised motor vehicle emissions budgets if any additional motor vehicle control measures are adopted to address the shortfall; and () a commitment to perform a mid-course review of the attainment status of the one-hour ozone nonattainment area by December 31, 2004. The mid-course review commitment relates to the Greater Connecticut one-hour ozone nonattainment area as well.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 2002. 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, Reporting and recordkeeping requirements.

Dated: November 30, 2001.

Ira W. Leighton,

Acting Regional Administrator, EPA—New England.

Part 52 of 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 H—Connecticut

2. Section 52.377 is amended by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 52.377 Control strategy: Ozone

* * * * *

(b) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 16, 1998 and February 8, 2000. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the Greater Connecticut serious ozone nonattainment area. The revision establishes an attainment date of November 15, 2007 for the Greater Connecticut serious ozone nonattainment area. This revision establishes motor vehicle emissions budgets for 2007 of 30.0 tons per day of volatile organic compounds (VOC) and 79.6 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the Greater Connecticut serious ozone nonattainment area, until revised budgets pursuant to MOBILE6 are submitted and found adequate. In the revision, Connecticut commits to revise their VOC and NO_X motor vehicle emissions budgets within one year of the release of MOBILE6. Connecticut also commits to conduct a mid-course review to assess modeling and monitoring progress achieved towards the goal of attainment by 2007, and submit the results to EPA by December 31, 2004.

(c) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 15, 2001. These revisions are for the purpose of satisfying the rate of progress requirement of section 182 (c)(2)(B) through 2007, and the contingency measure requirements of section 182 (c)(9) of the Clean Air Act, for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. These revisions also establish motor vehicle emissions budgets for 2002 of 15.20 tons per day of VOC and 38.39 tons per day of NO_X, and for 2005 of 11.42 tons per day of VOC and 29.01 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area.

(d) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 16, 1998, February 8, 2000 and October 15, 2001. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. These revisions also establish motor vehicle emissions budgets for 2007 of 9.69 tons per day of VOC and 23.68 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area, until revised budgets are submitted and found adequate pursuant to MOBILE6, or in conjunction with the additional mobile source measures, if any, to fulfill the shortfall. Connecticut commits to revise their 2007 VOC and NO_X transportation conformity budgets within one year of the release of MOBILE6, for both 1-hour ozone nonattainment areas. Connecticut commits to recalculate and submit revised motor vehicle emissions budgets, if any additional motor vehicle control measures are adopted to address the shortfall. Connecticut commits to adopt and submit by October 31, 2001, additional necessary regional control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007. Connecticut commits to adopt and submit by October 31, 2001, additional necessary intrastate control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007. Connecticut commits to adopt and submit: (1) additional restrictions on VOC emissions from mobile equipment and repair operations; and (2) requirements to reduce VOC emissions from certain consumer products. Connecticut also commits to conduct a mid-course review to assess modeling and monitoring progress achieved towards the goal of attainment by 2007, and submit the results to EPA by December 31, 2004.

[FR Doc. 01–30458 Filed 12–10–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[VT 022–1225a; FRL–7116–6]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Vermont; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d)/129 negative declaration submitted by the Vermont Agency of Natural Resources (ANR) on June 5, 2001. This negative declaration adequately certifies that there are no existing commercial and industrial solid waste incineration units (CISWIs) located within the boundaries of the state of Vermont. EPA publishes regulations under Sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (*i.e.,* CISWIs). The state of Vermont submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on February 11, 2002 without further notice unless EPA receives significant adverse comment by January 10, 2002. If EPA receives adverse comment we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permit Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, (617) 918–1659.

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I. What Action Is EPA Taking Today?

EPA is approving the negative declaration of air emissions from CISWI units submitted by the state of Vermont.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by January 10, 2002, this action will be effective February 11, 2002.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective February 11, 2002.

II. What Is the Origin of the Requirements?

Under Section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, Subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

III. When Did the CISWI Requirements First Become Known?

On November 30, 1999 (64 FR 67092), EPA proposed emission guidelines for CISWI units. This action would enable EPA to list CISWI units as designated facilities. EPA specified particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins/furans as designated pollutants by proposing emission guidelines for existing CISWI units. These guidelines were published in final form on December 1, 2000 (65 FR 75362).

IV. When Did Vermont Submit Its Negative Declaration?

On June 5, 2001, the Vermont Agency of Natural Resources (ANR) submitted a letter certifying that there are no existing CISWI units subject to 40 CFR part 60, subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of ''negative declaration'' instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.11480

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

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 final 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office 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 action does not create any new requirements on any entity affected by this State Plan. Thus, the action will 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.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Negative declaration approvals under section 111(d) of the Clean Air Act do not create any new requirements on any entity affected by this rule, including small entities. Furthermore, in developing the small MWC emission guidelines and standards, EPA prepared a written statement pursuant to the Regulatory Flexibility Act which it published in the 1997 promulgation notice (*see* 62 FR 48348). In accordance with EPA's determination in issuing the 1997 small MWC emission guidelines, this negative declaration approval does not include any new requirements that will have a significant economic impact on a substantial number of small entities.

Therefore, because this approval does not impose any new requirements and pursuant to section 605(b) of the Regulatory Flexibility Act, the Regional Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

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

EPA has determined that this approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Thus, this action is not subject to the requirements of sections 202, 203, 204, and 205 of the Unfunded Mandates Act.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

H. 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., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In approving or disapproving negative declarations under section 129 of the Clean Air Act, EPA does not have the authority to revise or rewrite the State's rule, so the Agency does not have authority to require the use of particular voluntary consensus standards. Accordingly, EPA has not sought to identify or require the State to use voluntary consensus standards. Therefore, the requirements of the NTTAA are not applicable to this final rule.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

J. 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 11, 2002. 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), 42 U.S.C. 7607(b)(2)). EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: December 4, 2001.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart UU—Vermont

2. Subpart UU is amended by adding a new § 62.11480 and a new undesignated center heading to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.11480 Identification of Plan-negative declaration.

On June 5, 2001, the Vermont Agency of Natural Resources submitted a letter certifying that there are no existing commercial and industrial solid waste incineration units in the state subject to the emission guidelines under part 60, subpart DDDD of this chapter.

[FR Doc. 01–30583 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50643A; FRL–6807–3]

RIN 2070–AB27

Revocation of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking significant new use rules (SNURs) for 2 substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent orders for these chemical substances may result in significant changes in human or environmental exposure.

DATES: This rule is effective February 11, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this revocation. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. 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/. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50643A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What Action is the Agency Taking?

The Agency proposed the revocation of these SNURs in the **Federal Register** of August 16, 2001 (66 FR 42976) (FRL–6763–3). The background and reasons for the revocation of each individual SNUR are set forth in the preamble to the proposed revocation. The comment period closed on September 17, 2001. EPA received one comment supporting the revocation of the SNURs. Therefore, EPA is revoking these rules.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was

warranted based on available information that indicated activities not described in the TSCA section 5(e) consent order or the PMN might result in significant changes in human or environmental exposure as described in section 5(a)(2) of TSCA. Based on these findings, SNURs were promulgated.

EPA has revoked the TSCA section 5(e) consent orders that are the basis for these SNURs and no longer finds that activities other than those described in the TSCA section 5(e) consent orders may result in significant changes in human or environmental exposure. The revocation of SNUR provisions for these substances is consistent with the findings set forth in the preamble to the proposed revocation of each individual SNUR.

Therefore, EPA is revoking the SNUR provisions for these chemical substances and will no longer require notice of intent to manufacture, import, or process these substances. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Regulatory Assessment Requirements

This rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''*Regulatory Planning and Review*'' (58 FR 51735, October 4, 1993).

Since this rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

Nor does it require any prior consultation as specified by Executive Order 12875, entitled ''*Enhancing the Intergovernmental Partnership*'' (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled ''*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*'' (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled ''*Protection of Children from Environmental Health Risks and Safety Risks*'' (62 FR 19885, April 23, 1997).

On August 4, 1999, President Clinton issued a new executive order on *Federalism*, Executive Order 13132 (64 FR 43255, August 10, 1999). This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts.

This rule is not subject to Executive Order 13211, ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 3, 2001.

William H. Sanders, III

Office Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.3460 and 721.6820 [Removed]

2. By removing §§ 721.3460 and 721.6820.

[FR Doc. 01–30594 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 241

[FRA Docket No. FRA–2001–8728, Notice No. 1]

RIN 2130–AB38

U.S. Locational Requirement for Dispatching of U.S. Rail Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim final rule and request for comments.

SUMMARY: This Interim Final Rule adds a new regulation that requires all dispatching of railroad operations that occur in the United States to be performed in the United States, with three minor exceptions. First, a railroad is allowed to conduct dispatching of railroad operations in the United States from a point outside the United States (''extraterritorial dispatching'') in emergency situations for the duration of the emergency if the railroad provides prompt written notification of its action to the FRA Regional Administrator of each FRA region in which the railroad operation occurs; such notification is not required before addressing the emergency situation. Second, the rule permits continued extraterritorial dispatching of the very limited track segments in the United States that were regularly being so dispatched in December 1999. This grandfathering covers the four domestic operations that are dispatched from Canada. Third, the rule would allow for extraterritorial dispatching from Canada or Mexico of fringe border operations. Such operations are acceptable provided the United States trackage being dispatched does not exceed 100 miles, each train is under the control of the same assigned crew for the entire trip over that trackage, and the rail line encompassing the trackage either both originates and terminates in either Canada or Mexico without the pick up, set out, or interchange of cars in the United States or is under the exclusive control of a single dispatching district and that portion of the line being dispatched extends no further into the United States than specified types of locations close to the border.

In addition, railroads that wish to commence additional extraterritorial dispatching may apply for a waiver under certain other provisions from the domestic locational requirement set forth in this regulation. Such a waiver may be granted if, inter alia, an

applicant can demonstrate to the satisfaction of FRA a program to assure safety oversight of the dispatching function comparable to that provided by FRA regulators for dispatchers located in the United States.

FRA is interested in receiving public comments on possible benefits and costs of this Interim Final Rule and comments on whether FRA should adopt an alternative regulatory scheme under which extraterritorial dispatching of United States railroad operations would be permitted and, if so, under what conditions. The Interim Final Rule will be in effect for a period of 365 days to provide FRA with time to analyze these comments. Based on the comments, FRA may: Issue final rule amendments to the Interim Final Rule making the Interim Final Rule permanent with any substantive changes FRA determines are appropriate; issue a notice proposing a new rule (a notice of proposed rulemaking), and possibly a final rule amendment extending the deadline of the Interim Final Rule while FRA completes this new rulemaking; or decide that no Federal regulation is appropriate and issue a final rule removing the Interim Final Rule.

DATES: (1) *Effective Date:* This regulation is effective January 10, 2002 through January 10, 2003.

(2) *Written Comments:* Written comments must be received by February 11, 2002. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(3) *Public Hearing:* FRA is planning to conduct at least one public hearing to be held in Washington, DC, in order to provide all interested parties the opportunity to comment on the provisions contained in the Interim Final Rule. FRA will issue a separate document in the **Federal Register** in the very near future to inform all interested parties as to the exact date and location where the public hearing(s) will be held.

ADDRESSES: Anyone wishing to file a comment should refer to the FRA docket and notice numbers (Docket No. FRA–2001–8728, Notice No. 1). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, United States Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001;

Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the ''Help'' menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For technical issues related to alcohol and controlled substance matters, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590 (telephone 202–493–6313); or for other technical issues, Dennis Yachechak, Railroad Safety Specialist, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590 (telephone 202–493–6260). For legal issues related to alcohol and controlled substance matters, Patricia Sun, Trial Attorney, FRA Office of the Chief Counsel, RCC–11, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590 (telephone 202–493–6038); or for other legal issues, John Winkle, Trial Attorney, FRA Office of the Chief Counsel, RCC–12, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590 (telephone 202–493–6067).

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I. Railroad Dispatchers Are Essential to the Safety of Railroad Operations

Proper dispatching is essential for safe railroad operations. Because trains have long stopping distances, train operations are not conducted by line of sight. Rather, the route ahead must be cleared for the train's movement. Switches must be aligned properly along the route. Potentially conflicting movements must be guarded against in order to prevent collisions. Dispatchers actually ''steer'' the train by remotely aligning switches. They determine whether the train should stop or move, and if so, at what speed, by operating signals and issuing train orders and other forms of movement authority or speed restriction. In addition, dispatchers protect track gangs and other roadway workers from passing trains by issuing authorities for working limits. Train crews on board locomotives carry out the dispatchers' instructions and are responsible for actually moving the train, but dispatchers make it possible to do so safely.

FRA is aware that, depending upon the ''method of operation'' in effect on a particular territory and the availability of computer-aided dispatching (CAD) systems, electrical or electronic systems may constitute significant checks on inadvertent dispatcher error. However, the possibility for error remains within any method of operation. For instance, there are a variety of scenarios in which dispatchers can override CAD system warnings. Even in traffic control territory, where vital signal logic nominally protects against conflicting movements, roadway workers and their equipment may lack protection due to dispatcher error; and it may be necessary to issue authorities for train movements past stop signals in a variety of circumstances. Thus, a dispatcher's judgment must be sound if railroad operations are to be conducted safely.

It is commonplace in today's railroad operations for dispatchers to be located at a significant distance from the trackage and operations they control. For example, CSX Transportation, Inc, (CSX) dispatchers in Jacksonville, Florida, control the operations of CSX, Amtrak, and commuter rail trains throughout the Southeast and Mid-Atlantic. This does not create any additional safety risk. FRA does not mean to suggest, in the discussion of dispatch locational issues, that mere distance from the physical site of rail operations poses a safety hazard.

II. Potential for Location of Dispatchers outside United States Borders

Currently, dispatchers located outside the United States control only very limited train movements in the United States. Specifically, the Canadian National Railway Company (CN) uses Canadian-based dispatchers to control trains operating from Ontario, Canada, into the United States on the following trackage in the United States: 1.8 miles to Detroit, Michigan; and 3 miles to Port Huron, Michigan. CN also uses Canadian-based dispatchers located in Edmonton, Alberta, Canada, to control trains operating into Minnesota on 40 miles of track on the Sprague Subdivision, which accommodates 10 trains daily.[1] Finally, the Eastern Maine Railway Company operates track between McAdam, New Brunswick, Canada, to Brownville Junction, Maine, 99 miles of which are in the United States. Operations on this trackage are dispatched from St. John, New Brunswick, Canada. These limited rail operations do not cover any trackage that has been designated by FRA and the Military Traffic Management Command of the Department of Defense (DOD) as vital to the national defense. In addition, there is no evidence that these extremely limited operations have adversely affected safety. No dispatchers located in Mexico control railroad operations in the United States.[2]

However, there is the prospect of increased use of dispatchers located outside the United States. Specifically, CP, which owns the Delaware and Hudson Railway Company (D&H), is interested in relocating from the United States to Canada dispatching functions involving the dispatching of approximately 32 D&H trains per day operating over the 546-mile D&H system in the United States. CN's previous acquisitions of the Grand Trunk Western Railroad, Inc. (GTW) (646 miles of track operated by GTW (1998 figures)), the Illinois Central Railroad Company (2591 miles of track) and the 2,500 route miles of U.S. Class II and III railroads formerly owned by the Wisconsin Central Transportation Company raise the possibility of additional extraterritorial dispatching at some future date.[3] In addition, CP's earlier acquisition of the Soo Line Railroad Company also presents future exposure of the same kind. FRA is aware that the merged or consolidated railroads (other than CP in the case of D&H) disclaim (or are silent regarding) any current intention to transfer dispatching work outside the country. The railroads have the discretion, however, to act in their own best interests and are under no obligation to continue to refrain from extraterritorial dispatching, and those interests may change as circumstances change.

With regard to Mexico, the Texas Mexican Railroad (TM) and Transportacion Ferroviaria Mexicana (TFM) are currently exploring the feasibility of obtaining trackage rights over trackage owned by the Union Pacific Railroad Company (UP) that extends between Laredo and San Antonio and between Laredo and Houston. Finally, because of present technology, railroads operating in the United States that now dispatch their trains in the United States could dispatch these trains from anywhere in the world.

III. Dispatchers Must Comply With the Federal Railroad Safety Laws To Move Traffic Safely in the United States

As noted above, proper dispatching is essential to conducting safe railroad operations. With respect to railroad dispatchers located in the United States, Federal statutes and regulations and oversight actions by FRA, as the agency charged with administering the Federal rail safety laws, together safeguard United States railroad operations when railroad dispatchers are located in the United States. 49 U.S.C. ch. 51, 201–213; 49 CFR 1.49. Examples of safety rules and laws affecting dispatchers include operating rules and efficiency testing (49 CFR part 217), drug and alcohol testing (49 CFR part 219), and hours of service (49 U.S.C. 21105 and 49 CFR part 228). (Hereinafter, references to a numbered part are to a part in title 49 of the CFR unless otherwise stated.) To promote compliance, FRA may conduct inspections and investigations and impose sanctions for violations of its safety standards against both railroads and individuals, including dispatchers, if the individual or railroad is located in the United States. *See,* e.g., 49 U.S.C. 20107; 49 U.S.C. ch. 213; and part 209, appendix A (a description of FRA's safety enforcement program and policy). However, paragraph (c) of § 219.3 currently exempts employees of a foreign railroad, including dispatchers, whose primary reporting point is located outside of the United States and who perform service in the United States covered by the hours of service laws from subparts E (identification of troubled employees), F (pre-employment testing), and G (random testing) of § 219.3. Drug and alcohol testing of such employees is addressed in detail in an FRA Notice of Proposed Rulemaking (NPRM) published elsewhere in the **Federal Register** today that proposes revisions to Part 219 requiring that such employees be tested. The provisions of part 241 along with the provisions of the NPRM will ensure that dispatchers controlling the bulk of rail operations in the United States are covered by effective drug and alcohol testing regulations.

Besides enforcing the Federal railroad safety laws, FRA also can take other safety-related actions. Further, FRA may conduct investigations of railroad accidents in the United States, including those involving dispatching, and may issue reports on the agency's findings, including its determination of probable cause. *See,* e.g., 49 U.S.C. 20107, 20902; 49 CFR 225.31. In addition, FRA may conduct research and development as necessary for every area of railroad safety, including dispatching. 49 U.S.C. 20108. Moreover, FRA may issue rules and orders, as necessary, for every area of railroad safety, including dispatching. *See* 49 U.S.C. 20103. Such orders may include emergency orders to eliminate or reduce an unsafe condition or practice, identified through testing, inspecting, investigation, or research, that causes an emergency situation involving a hazard of death or injury to persons. *See* 49 U.S.C. 20104. Finally, FRA has recently taken a pro-active approach in its ability to influence non-regulated aspects of dispatching operations through its Safety Assurance and Compliance Program (SACP), through its safety advisories published in the **Federal Register**, and through its visits to dispatching centers to ensure that dispatching is being safely conducted whether or not specific federal standards are being violated.

[1] Canadian railroads also operate on the following three lines from Canada into the United States without the use of a dispatcher: 1 miles to Buffalo, New York (CN); 1 mile to Niagara Falls, New York (Canadian Pacific Railway Company (CP); and 1.5 miles to Niagara Falls, New York (CN).

[2] There are currently five interchange operations between Mexican and United States railroads along the Texas-Mexico border and one on the Arizona-Mexico border involving Mexican-based train crews. These movements, however, are not controlled by a dispatcher. They are all within yard limits and are controlled by yard rules. These operations are located in Texas at Brownsville, Laredo, Eagle Pass, Presidio, and El Paso, and in Arizona at Nogales. Only the Eagle Pass operation is greater than one-fourth of a mile (length of haul on United States soil), and even that operation covers less than one mile.

[3] Likewise, although The Kansas City Southern Railway Company remains independent, it ''has entered into a comprehensive alliance with CN and IC.'' STB Ex Parte No. 582 (Sub-No. 1), advance notice of proposed rulemaking, n.7, 65 FR 18021 (April 6, 2000). ''Joint marketing arrangements enable railroads to offer joint-line service almost as seamless as single-line service * * *.'' *Id.* at n.10.

A. Hours of Service, Operating Rules and Efficiency Testing, and Drug and Alcohol Testing Requirements

Congress has established hours of service standards for safety-sensitive domestic railroad employees, including railroad dispatchers. In order to prevent fatigue which could adversely affect job performance, 49 U.S.C. 21105 mandates that dispatchers in the United States may not work more than nine hours during a 24-hour period in a location where two or more shifts are employed, or 12 hours during a 24-hour period where only one shift is employed. Part 228 requires railroads to retain written hours of service records for dispatchers and allows for access to those records by FRA inspectors.

In addition, domestic railroad dispatchers are subject to FRA safety standards. Under part 217, railroads operating in the United States are required to have operating rules, to periodically instruct employees (including dispatchers) on those rules, to periodically conduct operations tests and inspections on employees (including dispatchers) to determine the extent of their compliance with the rules, and to keep records of the individual tests and inspections for review by FRA.

Under part 219, dispatchers and other safety-sensitive railroad employees located in the United States are subject to random, reasonable suspicion, return-to-duty, follow-up, and post-accident drug and alcohol testing, as well as pre-employment testing for drugs.[4] *See* subparts B, C, D, F, and G of part 219. Post-accident testing is required for a dispatcher who is directly and contemporaneously involved in the circumstances of any train accident meeting FRA testing thresholds. *See* subpart C. A dispatcher found to have violated FRA's drug and alcohol rules, or who refuses to submit to testing, is required to be immediately removed from dispatching service for a nine-month period, and the railroad must follow specified procedures including return-to-duty and follow-up testing requirements before returning the dispatcher to dispatching service. *See* subpart B. Additionally, domestic-based employers must provide self-referral and co-worker reporting (self-policing) programs for their employees (subpart E), submit random alcohol and drug testing plans for approval by FRA (subpart G), conduct random testing under part 219 and DOT procedures found in part 40 (subpart H), submit annual reports (subpart I), and maintain program records (subpart J).[5]

FRA's broad-based, multi-component alcohol and drug program has reduced alcohol and drug abuse in the railroad industry since FRA's original alcohol and drug regulations were implemented in 1986.

- In 1987, testing for cause conducted under FRA and railroad programs resulted in a 4.0 percent positive rate for alcohol and a 6.9 percent positive rate for drugs. These rates have declined each year, with the 1998 testing for cause resulting in a 0.36 percent positive rate for alcohol and a 0.95 percent rate for drugs.
- Random drug testing began in 1989. The first full year's data for 1990 indicated a 1.04 percent rate, declining to a 0.77 percent rate in 1998.
- Random alcohol testing began in 1994, with the first full year's data for 1995 resulting in a 0.42 percent rate, which has declined each year to a 0.003 percent rate for 1998.

FRA post-accident testing data provide perhaps the most stark and compelling proof of the decline in alcohol and drug abuse in the railroad industry. In its post-accident testing program, in which testing is triggered only by significant accidents, FRA may use lower drug detection levels (cutoffs) and test for more substances than those tested for in other types of FRA testing. Post-accident testing data are the most scrutinized because FRA reviews each testing event, and tests each specimen in a designated contract laboratory, which FRA inspects quarterly. Furthermore, because the program has been in effect since 1987, post-accident testing data provide the longest trend line.

An analysis of the post-accident testing data in the chart below demonstrates how positive test results have dramatically declined since FRA's program started. In 1987, the first year of the program, 42 employees produced a positive specimen, resulting in a post-accident positive rate of 0.4 percent for alcohol and 5.1 percent for drugs. By 1998, only four employees produced a positive specimen, resulting in positive rates of 0.0 percent for alcohol and 2.6 percent for drugs.

As shown in the post-accident testing chart below, in each of the fields—''Qualifying Events,'' ''Employees Tested,'' and ''Employees Positive One/More Substances [Number (A=Alcohol; D=Drug)]''—FRA has achieved a desired reduction, despite a significant increase in rail traffic. The deterrent effect of random drug testing, which was implemented in 1988–1989, most certainly influenced the dramatic reduction in post-accident positives from 41 in 1988 to only 17 in 1990. Additionally, in the eight years from 1987 through 1994, there were 20 post-accident alcohol positives, but only two post-accident alcohol positives in the succeeding four years after implementation of random alcohol testing in 1994. While some refinement of regulatory requirements over the years has reduced the class of qualifying events (cost criteria for two of the qualifying events have been increased), the remaining events are those for which higher positive rates would be expected due to a higher component of likely human factor involvement.

FRA is aware that many factors have contributed to these results and probably influenced movement in both directions. The number of employees tested has decreased due to fewer qualifying events and crew consist reductions. For other than FRA post-accident testing, the Department of Health and Human Services (DHHS) has reduced the detection cut-off level for marijuana metabolites and has increased the detection levels for opiates used in Federal workplace detection programs such as FRA's. Another factor likely to have contributed to higher industry positive rates is the constant improvement in railroad random testing

[4] In the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102–143, Congress found that—(1) Alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, trains, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on or off duty, by those individuals who are involved in the operation of aircraft, trains, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right to privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate. 49 U.S.C. app. 1434 note. FRA's random testing regulations respond to Congress' directive in the Act (49 U.S.C. 20140) to issue random testing regulations relating to alcohol and drug use in railroad operations.

[5] For example, Subpart I requires that certain information on a railroad's tests and inspections related to enforcement of the company's rules on alcohol and drug use be reported annually to FRA for review.

programs. Nonetheless, testing data remain the best indicator of the success that the comprehensive programs mandated by FRA have had in significantly reducing alcohol and drug abuse in the railroad industry.

FRA POST-ACCIDENT TOXICOLOGICAL TESTING RESULTS (1987–1998)

Year	Qualifying events	Employees tested	Employees positive one/more substances [number (A=Alcohol; D=Drug)]
1987	179	770	42 (3A–39D)
1988	178	682	41 (3A–38D)
1989	161	607	24 (6A–18D)
1990	149	524	17 (1A–16D)
1991	157	552	8 (2A–6D)
1992	109	332	7 (1A–6D)
1993	128	403	8 (2A–6D)
1994	115	294	7 (2A–5D)
1995	82	225	2 (0A–2D)
1996	73	197	1 (0A–1D)
1997	86	240	3 (2A–1D)
1998	68	153	4 (0A–4D)

Note on this chart, concerning 49 CFR 219, subpart C—Post-Accident Toxicological Testing:

The positives reflected in the chart indicate the presence of drugs or alcohol in a covered employee during the event. A positive result does not necessarily indicate a causal relationship with the accident. Causal determinations are made only after a thorough review of all factors that may have contributed to the accident.

With certain stated exceptions, post-accident toxicological tests are required to be conducted for the following events:

1. Major Train Accident (involving damage exceeding the current FRA reporting threshold ($6,600 in 1998)) involving:

(a) A fatality;

(b) A release of hazardous material lading from railroad equipment resulting in either an evacuation or a reportable injury; or

(c) Damage to railroad property of $1,000,000 or more.

2. Impact Accident (as defined in § 219.5 involving damage exceeding the FRA reporting threshold) involving:

(a) A reportable injury; or

(b) Damage to railroad property of $150,000 or more.

3. Fatal Train Incident: fatality to any on-duty railroad employee involving movement of on-track equipment with damage not exceeding the reporting threshold.

4. Passenger Train Accident: passenger train involved in an accident that exceeds the reporting threshold and results in an injury reportable to FRA under 49 CFR part 225.

See 49 CFR 219.201(a). Rail/highway grade crossing accidents and accidents wholly resulting from natural causes (e.g., tornado), vandalism, or trespassing are exempt from FRA post-accident testing. *See* 49 CFR 219.201(b). For a major train accident, all train crewmembers must be tested, but any other covered employees (e.g., dispatchers, signalmen) determined not to have had a role in the cause or severity of the accident are not to be tested. *See* 49 CFR 219.201(c)(2).

B. FRA's Oversight and Enforcement Activities

In order to effectively promote safety in all areas of railroad operations, including dispatching, FRA has additional tools and programs at its disposal other than the strictly regulatory framework described above. FRA's SACP is an approach to safety that emphasizes the active partnership of FRA, rail labor representatives, and railroad management in identifying current safety problems and jointly developing effective solutions to those problems. One fundamental principle of this approach is tracing a safety problem to its root cause and attacking that root cause instead of its symptoms. Where a problem is determined to be system-wide, SACP allows for a system-wide approach rather than individual, uncoordinated actions. So far, SACP has demonstrated significant capacity for identifying and eliminating the root cause of system-wide rail safety problems, including dispatching-related problems, by enlisting those most directly affected by such problems—railroad employees and managers—in a partnership effort.

For example, in 1997, FRA effectively used SACP to address system-wide problems on the UP and Southern Pacific Transportation Company (SP) (collectively UP/SP) during the period that the two railroads were in the process of merging with each other.[6] Between June 22 and August 31, 1997, UP/SP experienced five major train collisions that resulted in the deaths of five UP/SP employees and two trespassers. These accidents were in addition to a series of yard switching accidents that claimed the lives of four UP/SP train service employees. On August 23, under the auspices of the SACP, FRA launched a comprehensive safety review of UP/SP's operations, including its dispatching, and in the ensuing two-week period, as many as 80 FRA and state safety inspectors were on UP/SP property to determine the magnitude and extent of safety problems and to recommend measures to address those problems. In November, following two non-fatal collisions, FRA sent a team of 87 Federal and state inspectors onto UP/SP property for one week to ensure that the safety deficiencies identified in the initial review were being dealt with at the highest levels of the organization.

As a result of the safety reviews, FRA concluded that a fundamental breakdown existed in some of the basic railroad operating procedures and practices essential to maintain a safe operation, particularly in the area of dispatching. As part of the SACP process, FRA conducted a comprehensive safety audit of UP/SP's Harriman Dispatch Center, which is the railroad's main dispatching facility and which dispatches operations on approximately 95 percent of UP/SP's territory. During the initial phase of the safety audit, FRA inspectors and safety specialists spent a total of 31 days at the dispatching center observing and analyzing UP/SP dispatching practices

[6] SP merged into UP effective February 1, 1998.

and procedures. Later, FRA inspectors headquartered within a few miles of the dispatching center made frequent follow-up visits to the dispatching center. FRA observed inefficient and unsafe practices by supervisors and dispatchers at the dispatching center, and correctly attributed those practices to inadequate training and extreme work overload. FRA made specific recommendations, which UP/SP accepted, such as creating additional dispatch positions, realigning dispatchers' territories to better balance the workload, hiring new dispatchers, tripling the number of dispatching supervisors, making improvements to the software in the UP/SP's CAD system, and forming a working group consisting of representatives from FRA, rail labor, and UP/SP management to continually monitor and address dispatching issues that may arise.[7] As a result of FRA's SACP efforts, UP/SP's safety performance recovered rapidly. During the year following FRA's dispatching initiative, UP/SP saw fatalities due to train collisions drop by 100 percent, from seven in 1997 to none in 1998. Such an immediate response could not have been effectuated without FRA's ability to obtain access to its facilities, which would not have been guaranteed if UP/SP's dispatching facilities were located outside the United States.

Another safety tool FRA has at its disposal is the safety advisory.[8] Safety advisories are issued by FRA and published in the **Federal Register** to disseminate important information on critical safety concerns. By publishing safety advisories in the **Federal Register**, FRA is able to reach the entire regulated community instead of just the railroad whose actions prompted the safety advisory. Previous safety advisories have concerned problems with train control systems, train handling procedures, equipment securement procedures, and procedures for reducing the risk of damage to tracks and bridges from flash floods. For example, on December 23, 1996, FRA published a Notice of Safety Bulletin in the **Federal Register** (61 FR 64191) addressing recommended safety practices for Direct Train Control (DTC), an umbrella term that refers to methods of operation used by dispatchers to control train movements that are known variously as Direct Traffic Control, Track Warrant Control (TWU), Track Permit Control System (TICS), and Form D Control System (DCS), and similar means of authorizing train movements. The safety bulletin was issued as a result of FRA's investigation of a head-on collision between two freight trains operated by CSX, and included three recommended safety practices for operations in DTC territory. Although railroad compliance with safety advisories is voluntary, the effectiveness of the advisories is greatly influenced by FRA's ability to determine the nature of the railroad's responsive action through on-site inspections and the ability to issue regulations and emergency orders should the railroad refuse to abide by the safety advisory.

Another safety tool FRA utilizes to promote rail safety is the site inspection, which is more closely associated with FRA's regulatory enforcement program than either SACP or safety advisories but can be an integral element in either. *See*, e.g., 49 U.S.C. 20107. Through site inspections, FRA's safety inspectors are able to observe a railroad's practices first-hand and, if warranted, write reports and recommend that civil penalties be assessed for violations. FRA frequently conducts inspections of railroad dispatching centers to monitor operating practices and dispatching procedures. As FRA's experience during the UP/SP SACP investigations demonstrates, site inspections are invaluable in investigating and addressing safety problems and can be used to quickly improve a railroad's operating practices.

These inspections may also reveal the need for an emergency order, especially if the railroad is unwilling to take corrective action. 49 U.S.C. 20104 (superseding 45 U.S.C. 432). FRA's emergency orders provide an example of the kind of dramatic action the agency takes in response to hazards discovered during routine site inspections. FRA received the statutory authority to issue emergency orders in 1970. Of the 22 emergency orders that FRA has issued since then, at least nine have been issued primarily as a result of such routine inspections (as opposed to FRA investigations of railroad accidents or other forms of inquiry).

All of these tools, both regulatory and non-regulatory, are strengthened by FRA's ability to readily gain access to railroad facilities. Such tools as SACP activities, railroad site visits, and emergency orders depend, to a significant degree, on easy access to railroad facilities. For these tools to work, FRA must be assured of such access. FRA is not certain at this time whether access can be assured outside the borders of the United States, or whether the laws of foreign countries will adequately safeguard United States rail operations. While FRA has the power to issue an emergency order under 49 U.S.C. 20104(a) against a railroad that does not have in place a program imposing adequate safety requirements for extraterritorial persons that dispatch domestic railroad operations, FRA would need to meet the high burden of proof entailed in sustaining such an order if it is challenged.[9]

IV. Foreign Regulatory Jurisdiction

FRA may be unable to rely on foreign laws and rules governing dispatchers, in themselves, to ensure safety in accordance with FRA requirements. There can be a number of complexities in the ways foreign laws and regulations apply to dispatching. First, although dispatching can be performed from any country in the world, not every country in the world has an entity that regulates rail transportation safety. Second, even if the host country has established a transportation regulatory entity, that entity may well lack full safety jurisdiction over the railroad operations in the United States that are being dispatched from the host country.

With respect to a host country regulatory agency's level of regulatory authority over the individual dispatchers who conduct extraterritorial dispatching, there appear to be at least four different levels of jurisdiction over these dispatchers, depending on their relevant duties. For jurisdiction purposes, an extraterritorial dispatcher could likely fall into one of at least four categories:

Type 1—a dispatcher who controls both operations in the host country and operations in the United States during a single tour of duty for every tour of duty;

Type 2—a dispatcher who controls both operations in the host county and operations in the United States during a single tour of duty but not during every tour of duty;

Type 3—a dispatcher who sometimes controls operations in the host country and sometimes controls operations in the United States, but never operations

[7] FRA's SACP program on the post-merger UP continues today, and dispatching is still an important aspect of the program. As a result of the continued monitoring of UP's activities, UP hired 114 new dispatchers in 1998 and, as of mid-year 1999, planned to hire 124 new dispatchers by the end of 1999. In part as a result of this effort, problems with rail traffic congestion and accidents have been addressed.

[8] Safety advisories are also known as safety directives and safety bulletins. All three serve the same purpose—to advise the regulated community of critical safety information.

[9] In order to justify an emergency order, FRA must establish that ''an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death or personal injury.'' *See* 49 U.S.C. § 20104(a).

in both countries during a single tour of duty; and

Type 4—a dispatcher who controls only operations in the United States and never controls operations in the host country.

For example, if the host country's hours of service restrictions (if any) apply in the same manner as FRA has traditionally interpreted those of the United States (49 U.S.C. ch. 211), then those restrictions would normally apply only if the nexus to railroad safety in the host country is clear because the dispatcher controls railroad operations that occur in the host country at least at some point during his or her duty tour. Several conclusions result. First, the host country's rules would always apply to a Type 1 dispatcher (because he or she is controlling operations in the host country and thus performing service subject to those rules during each of his or her duty tours). Second, the host country's rules would apply only sometimes to a Type 2 or Type 3 dispatcher (only during the duty tours when he or she controls operations in the host country). Third, the host country's rules would never apply to a Type 4 dispatcher (because he or she does not control operations in the host country during his or her duty tour). Of course, the necessity for the Type 2 and Type 3 dispatcher to comply with the host country's rules during some of his or her duty tours might benefit the safety of United States railroad operations, but not as much as if the rules applied to all of his or her duty tours. In the case of the Type 4 dispatcher, who controls only operations in the United States and none in the host country, the probable inapplicability of the host country's safeguards against fatigue to any of his or her dispatching would mean that he or she could legally be required to work for dangerously long periods of time, which would increase the risk of human error that could lead to train accidents and train incidents in the United States. Similar typologies and scenarios could be created with respect to the dispatching centers themselves (e.g., security measures) and to other aspects of the dispatching function, such as training in the railroad company's operating rules paralleling part 217.

FRA invites comments on this potential regulatory gap and how it could be addressed if extraterritorial dispatching is allowed.

V. Hours of Service, Operating Rules Compliance, and Substance Abuse Concerns

Moreover, current regulations and statutes governing hours of service limitations, operational testing, and drug and alcohol programs applicable to dispatchers are not uniform throughout foreign countries, and may fall below the safety standards established by the United States' statutes and regulations. Therefore, even if a foreign country's regulations and statutes applied to and completely covered cross-border dispatching of United States rail operations, the safety of the United States rail operations may not be protected to the same degree as when dispatchers are subject to United States statutory and regulatory requirements or their equivalents. Any dispatcher, wherever located, who controls rail operations while under the influence of alcohol or drugs, exhausted because of working excessive hours, or not properly trained and tested on railroad operating rules could issue incorrect directions or could fail to issue directions, thereby jeopardizing the safety of railroad employees or causing a train collision or derailment with resulting injuries or death to train crews, passengers, or both, and possible harm to surrounding communities. Because problems such as fatigue, drug and alcohol abuse, and lack of effective job training seriously compromise the safety-critical performance of employees who dispatch trains, FRA is concerned that foreign railroads, or domestic railroads that may employ or enter into a contract for services of a foreign-based dispatcher who would control a domestic train movement, must comply with the substantive requirements of the United States hours of service laws, FRA hours of service recordkeeping regulations, FRA operational testing regulations, and FRA drug and alcohol testing regulations, or their equivalents.

At present, it does not appear that, for example, Canadian hours of service and drug testing requirements are the full equivalents of United States statutory and regulatory requirements. For example, under United States law, dispatchers may work no more than twelve hours in a location where only one shift is employed and no more than nine hours in a location where two or more shifts are employed, but Canada does not regulate hours of service for dispatchers. The lengths of their shifts are determined by labor agreements between the applicable union and the respective railroads.[10] In addition, FRA regulations require that United States dispatchers undergo operational testing, but Canada has no such requirement. United States alcohol and drug testing requirements are also more comprehensive and stringent than most other countries' standards.

In the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102–143 (the Act), Congress recognized the importance of drug and alcohol testing in protecting the safety of domestic transportation systems. *See, supra*, note 4. As stated in the fifth Congressional finding in that Act, Congress believed that ''the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, especially random testing.'' *Id.* Given that the misuse of alcohol and drugs has proven to be a critical factor in transportation accidents, testing is integral to ensuring that domestic transportation systems, including railroads, operate in the safest possible manner. In response to Congress' directives in the Act, FRA expanded its existing regulations relating to drug and alcohol use in railroad operations.

Under FRA's mandatory alcohol and drug testing program, dispatchers working in the United States are subject to random, reasonable suspicion, return-to-duty, follow-up, and post-accident drug and alcohol testing as well as pre-employment testing for drugs. Post-accident testing is required for a dispatcher who is directly and contemporaneously involved in the circumstances of any train accident meeting FRA thresholds. *See* § 219.203. A dispatcher found to have violated FRA's drug and alcohol rules at §§ 219.101 or 219.102 is required to be removed from covered service and is required to complete a rehabilitation program. *See* § 219.104. A dispatcher who refuses to submit a required sample is required to be removed from covered service for nine months and to complete a rehabilitation program. *See* §§ 219.104, 219.107, and 219.213. Additionally, covered employers must provide self-referral and co-worker report (self-policing) programs for their employees. *See* subpart E.

All dispatchers working in the United States who are controlling United States railroad operations are covered by these regulations, and FRA believes that any extraterritorial dispatcher controlling railroad operations in the United States must be covered by the same or fully equivalent requirements.[11] To allow any

[10] It is arguable whether the hours of service laws of the United States (49 U.S.C. ch. 211) may be applied extraterritorially. In the past, FRA has not done so. If in the future FRA does apply the United States hours of service laws to activity outside of the United States, FRA's monitoring and enforcement actions would be subject to all of the problems discussed in Section IV and elsewhere in this preamble.

[11] As previously noted, dispatchers of a foreign railroad whose primary reporting point is located

dispatchers who are not subject to the comprehensive and stringent testing requirements that DOT and FRA believe are necessary for rail safety to control domestic operations would be contrary to FRA's safety efforts.

Drug and alcohol abuse by railroad workers is not limited to the United States.[12] While some countries, such as Canada, have addressed the serious threat that alcohol and drug use poses to the safety of railroad operations, they have done so in a less comprehensive manner than FRA's approach in implementing our statutory scheme. For example, Transport Canada has doubts whether Canadian Constitutional law permits it to implement our regulatory scheme. To date, Transport Canada has not imposed drug and alcohol rules like those of DOT, although motor carriers in Canada have implemented DOT drug and alcohol rules with respect to drivers who enter the United States. Transport Canada has approved Rule G, which was developed by the Canadian railroad industry, but has not reviewed and approved individual railroad plans implementing Rule G.[13] Rule G does not directly prohibit off-duty use of drugs and abuse of alcohol by dispatchers as contrasted with FRA's regulations, which prohibit any off-duty use of drugs and which prohibit use of alcohol within four hours of reporting for covered service or after receiving notice to report for covered service since such usage may ultimately affect an individual's performance on the job. *See* §§ 219.101(a)(3) and 219.102. Furthermore, unlike the FRA's part 219, Rule G also does not provide for alcohol and drug testing of railroad employees. In certain cases, railroads have developed their own testing plans.

FRA has reviewed the Canadian railroads' drug and alcohol testing plans implementing Rule G and found that they are not fully equivalent to FRA's rules. For example, CP's current plan does not provide for random testing, which is a key part of a program to deter drug and alcohol abuse; nor are CP's provisions with respect to pre-employment testing, reasonable suspicion testing, post-accident testing, and refusal to provide a sample equivalent to FRA's more stringent rules.[14] In fact, the only aspect of CP's plan that would be acceptable to FRA is the self-referral and co-worker report (self-policing) programs, and FRA believes that even those programs would need changes before they would be completely acceptable.

In addition, some drugs, such as codeine, which have adverse effects on judgment and reaction time and are available only with a prescription in the United States are available over-the-counter in foreign countries, and over-the-counter formulations may have stronger sedative effects than their United States equivalents.

VI. Security Issues

No nation is immune from criminal actions affecting workplaces or the potential for terrorism. In the United States, occasional workplace shootings by angry or unhinged employees and major incidents like the Oklahoma City and 1993 World Trade Center bombings have heightened awareness of the need for security measures, particularly at critical facilities or with respect to the movement of extremely hazardous materials (e.g., radioactive substances or military munitions). This nation

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outside of the United States and who perform service in the United States are currently exempt from certain Part 219 requirements. *See* 49 CFR 219.3(c). Elsewhere in the **Federal Register**, FRA is publishing an NPRM that proposes revisions to Part 219 requiring drug and alcohol testing of such employees.

[12] In 1987, a Canadian survey commissioned by a federally appointed Task Force on the Control of Drug and Alcohol Abuse in the Railway Industry interviewed by telephone 1,000 randomly selected Canadian railway workers who held positions identified as ''safety-sensitive,'' including dispatchers. The information was collected to assist the Task Force in making recommendations to the Canadian government on steps needed to address any problems of substance abuse in the railroad industry.

The survey revealed, among other things, that 20.6 percent of those surveyed had come to work feeling the effects of alcohol and 9.2 percent felt that their use of alcohol had at some time compromised job safety. In addition, 3.8 percent admitted using illegal drugs, 2.5 percent admitted to using illegal drugs during their shift, and 4 percent were aware of other workers taking drugs during working shifts. As the following passage from a recent Canadian arbitration award involving CN illustrates, drug and alcohol abuse problems continue to exist in Canada:

''* * * As related in the submission of the employer's counsel, CN has extensive experience in drug and alcohol testing over the past decade, including circumstances of hiring, promotion, reasonable cause and post accident testing. Its data confirm a relatively high incidence of positive test results across Canada, exceeding ten per cent over all categories of testing in Western Canada. While positive drug tests obviously do not confirm that individuals in the railway industry have necessarily used illegal drugs while at work, a substantial number of awards of the Canadian Railway Office of Arbitration provide a well-documented record of cases which reveal the unfortunate willingness of some employees to have drugs or alcohol in their possession while at work, to use them while at work, or to report for work under their influence * * *.''

In the Matter of an Arbitration Between Canadian National Railway Company and National Automobile, Aerospace, Transportation and General Workers Union of Canada (Union) and Canadian Council of Railway Operating Unions (Intervener), Re: the Company's Drug and Alcohol Policy at 123–24, Arbitrator Michel G. Picher (July 18, 2000).

The drug and alcohol abuse problem in Canada is relevant to the current problem posed by extraterritorial dispatching and helps demonstrate the need for more comprehensive drug and alcohol testing of extraterritorial dispatchers controlling railroad operations in the United States.

[13] Rule G provides that:

(a) The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.

(b) The use of mood altering agents by employees subject to duty, or their possession or use while on duty, is prohibited except as prescribed by a doctor.

(c) The use of drugs, medication or mood altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely, by employees subject to duty, or on duty is prohibited.

(d) Employees must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely.

[14] Problems with CP's plan are as follows. First, CP's plan does not provide for random testing, which Congress found, and FRA's experience has shown to be, so integral to preventing drug and alcohol abuse in the United States. Credible research indicates that a ''broad-based'' approach (with a credible random deterrence program), like FRA's is the only effective methodology to reduce the adverse effects of substance abuse.

Second, CP will not conduct post-accident testing unless there is independent evidence that causes the railroad to suspect impairment of the dispatcher. By contrast, a dispatcher in the United States who is directly and contemporaneously involved in the circumstances of any train accident meeting FRA thresholds as determined by a train supervisor must be tested or else face a nine-month suspension from covered service and the requirement to complete a rehabilitation program and return-to-duty testing before returning to dispatcher service. CP will not use equivalent sanctions against an employee for failing to provide a sample; the problem with this approach is discussed below.

Third, while CP's plan does provide for reasonable suspicion testing, CP will not require an employee to provide a sample for testing. If CP's investigation fails to establish that the employee was impaired, the employee may go back to work without penalty or rehabilitation. Obviously, in many instances, establishing impairment would be difficult without a sample. In contrast, if a dispatcher in the United States refuses a test, he or she is Federally prohibited from performing service as a dispatcher for nine months and must complete required rehabilitation before being allowed to return to dispatching service. Even if FRA were able to apply the disqualification requirements of part 219 to a foreign-based dispatcher who refused a random, for cause, or post-accident test, and if the railroad were able to honor this sanction under foreign law, that sanction might be wholly ineffective because the railroad could legally reassign the dispatcher to a desk handling only host-country traffic, where he or she would suffer no loss of pay. The result would be a near-total loss of the deterrent effect associated with testing.

Fourth, FRA regulations require that new applicants and existing employees seeking to transfer for the first time from non-covered service to duties involving covered service (e.g., dispatching) must undergo pre-employment testing for drugs. CP would make such testing a condition of employment for new employees, but would not apply it to incumbent employees within the department under which dispatchers fall who apply for dispatching jobs. It is sometimes difficult to detect and document drug use in an employee population and, therefore, it is important to do the screening test for anyone who is moving into a safety-sensitive position.

experienced a much more extreme example of a security breach on September, 11, 2001, when terrorists slipped through security forces at three major U.S. airports and subsequently hijacked four airliners. Two of the planes were intentionally flown into the World Trade Center, resulting in the collapse of the Twin Towers, one was intentionally flown into the Pentagon, and the fourth crashed in rural Pennsylvania, presumably before reaching its intended target. As a result of these attacks, over 3,800 people were killed and the landscape of this country was changed forever as not only did the attacks cause an incredible amount of destruction but they also proved unequivocally that citizens of the United States are targets for terrorists and that those terrorists view modes of transportation, including railroads, as a means of carrying out their murderous agendas.[15]

Given the threat that terrorists pose to railroads systems, including their dispatch centers, railroad security measures such as guards that control access to railroad facilities, proximity cards that allow access to dispatching locations, use of railroad police to detect unauthorized persons on railroad property, and background checks on applicants for employment as dispatchers and train crew members are increasingly important to protect railroad property, railroad employees, and railroad passengers from violent actions. FRA is working with domestic railroads as they review the adequacy of their security plans and expects that the railroads will voluntarily take whatever steps are needed to safeguard their systems from terrorists. However, FRA has the authority to require, through regulations and orders, additional security measures that FRA determines are necessary to protect the security of domestic railroad operations against potential terrorist threats.[16]

Law enforcement and security agencies in the United States cannot protect extraterritorial dispatch facilities, and FRA has neither the access to such facilities to investigate instances of violence nor the authority to require additional security measures that FRA determines are necessary to protect the security of domestic railroad operations against potential terrorist threats. FRA does not know, at this time, whether foreign railroads employ security measures comparable to those of United States railroads or whether foreign governments have enforceable security requirements that would effectively protect dispatch facilities. As a result, foreign-based facilities could be more attractive targets than facilities located in the United States and be more susceptible to terrorist infiltration or attack.[17] FRA believes it could not approve a railroad's stationing of dispatchers in a foreign country absent a showing that the security protections afforded the dispatching function were equivalent to those at United States dispatch facilities, and FRA had access to investigate incidents of violence occurring at these facilities.

There is also a national defense aspect to the security of railroad operations. There are both railroad safety and national defense risks posed by extraterritorial dispatch centers having access to information regarding the shipment of military goods (e.g., nuclear weapons and armored vehicles) and extremely hazardous materials (e.g., radioactive materials), and having the capability to control the movement of these items. The Military Traffic Management Command of the Department of Defense (DOD) and FRA have worked together to identify and designate a Strategic Rail Corridor Network (STRACNET). STRACNET consists of more than 30,000 miles of interconnected network of rail corridors (not actual rail lines) in the United States that the agencies have deemed vital to national defense. In the event of a large-scale military mobilization, it is very important that this network be fully responsive to national defense needs and priorities. In any arrangement locating dispatchers abroad, FRA believes, there would have to be effective provisions to ensure that this national defense need can be met. FRA seeks comment on whether, and how, this goal could be accomplished.

VII. Language Differences

There are also safety concerns that are more likely to arise specifically because dispatchers are located in a foreign country. There would need to be a satisfactory resolution to such issues before FRA would be comfortable in permitting dispatchers to be located abroad. For example, it is essential for safe railroad operations that employees involved with directing and effectuating train movements be able to communicate clearly with each other. The railroad personnel most directly involved with train movements are the dispatchers who transmit written and oral instructions to train crews and the train crews who are responsible for carrying out the dispatchers' instructions and for operating trains in accordance with railroad traffic control devices. In addition, dispatchers must also be able to communicate with roadway workers who may control entry onto the stretches of track on which they are working. If it is allowed, extraterritorial dispatching raises the possibility that some of these employees may not be able to communicate with each other because they speak different languages.

FRA's primary safety concern is that one of the parties (either the train crew or the dispatcher) involved in an extraterritorially dispatched operation may not be proficient in the language that is being used to conduct train operations. Thus, there is the potential for miscommunication where one of the parties, unbeknownst to the other, fails to convey necessary safety-critical information, inadvertently conveys false or misleading information, or fails to properly understand safety-critical information that has been conveyed. The results of such a miscommunication could be disastrous. Such a lack of understanding would be even more problematic if railroad operations crossed more than one border (e.g., Canada, the United States, and Mexico).

Another problem related to communication that could arise if extraterritorial dispatching is allowed concerns possible differences in railroad terminology between one country and another. The railroad industry in the United States is both a highly technical industry that uses modern terms and an industry that has existed for 170 years and uses terms that have existed since at least the turn of the century. It would be unreasonable to assume that, absent

[15] According to the testimony of a convicted terrorist, terrorism training in Afghanistan included "'how to blow up the infrastructure of a country'—such as military installations, electric plants, corporations, airports and railroads,'' *Convicted Terrorist Testified on Deadly Training,* Wash. Times, September 27, 2001, at A14 (emphasis added).

[16] Section 20103(a) of title 49, United States Code, gives the Secretary of Transportation plenary authority to address any hazards to life and property that may arise in the context of railroad operations. To date, FRA's exercise of this authority has been limited. FRA has issued rules on Passenger Train Emergency Preparedness (49 CFR part 239) that require passenger railroads to conduct detailed planning for emergency situations, which are defined to include ''security situations'' such as bomb threats. (See 49 CFR § 239.7 and 49 U.S.C. § 20133(a)(4).)

[17] FRA's concern is not limited to Third World countries or countries where terrorists are traditionally expected to operate. A recent article in the Washington Post highlighted the threat that currently exists in Canada. According to the article, ''Canada's intelligence agency has identified more than 50 terrorist groups and 350 individual terrorists who live, work and raise money in Canada.'' Deneen L. Brown, *Attacks Force Canadians to Face Their Own Threat,* The Washington Post, Sept. 23, 2001, at A36. The article went on to note that some of those terrorists were from countries in the Middle East, which is the region of the world from which the terrorists who masterminded the September 11, 2001, attacks are believed to have come.

appropriate training, railroad employees in other countries would be familiar with terms used in the United States. Given the immediacy with which problems sometimes develop while trains are on the tracks, it would be dangerous to discover such a miscommunication at a time when lives and property are in the balance. This problem would be compounded if the dispatcher and the train crew were having problems communicating because of language differences.

The Federal Aviation Administration also recognized that international operations cause communication problems. That agency, however, has addressed the problem through regulations requiring that all domestic air traffic controllers speak English and that all foreign air carriers who operate in the United States have personnel in domestic air traffic control towers who, in the event that no member of a foreign air crew can communicate with ground personnel, speak both English and their native language. *See* 14 CFR 65.33 and 129.21. In addition, FAA is currently considering a requirement that would mandate that flight attendants understand sufficient English to communicate, coordinate, and perform all safety-related duties. That requirement is part of a comprehensive flight attendant training Notice of Proposed Rulemaking that FAA anticipates publishing in the near future. *See* 65 FR 23153 (Apr. 24, 2000).

FRA recognizes that there may be solutions to these problems and therefore requests comments on how to resolve these issues so that domestic rail safety is not compromised. FRA believes solutions to these problems would have to be found before extraterritorial dispatching could be permitted.

VIII. Units of Measure

It is also essential for safe railroad operations in the United States that certain railroad communications concerning such operations that relate to measurements of such critical factors as location, distance, and speed, use a common standard. The two currently used standards are English units, used predominately in the United States, and the International System of Units (''SI''), which is more commonly known as the ''metric system'' and is used by most of the rest of the world, including Canada and Mexico. Because a kilometer (roughly 3,280.8 feet) is approximately six-tenths the length of a mile (5,280 feet), the potential for confusion is obvious, especially where a measurement of such matters as speed, location, or distance is concerned. If a dispatcher instructs a train and engine crew to travel a specified number of kilometers at a certain speed measured in kilometers per hour and the crew mistakenly thinks that the dispatcher is referring to either or both measurements in miles, the consequences could be at best problematic and, at worst, devastating.[18] FRA requests comments on how to resolve the measurement issue so domestic rail safety is not compromised.

IX. Other Concerns

Communications and computing systems at centralized dispatching are extremely complex. When the operations of a dispatching center are disrupted, the main remedy is changing to local dispatching. This typically results in a considerable disruption of service. For example, in recent years the CSX dispatch center in Jacksonville, Florida went off line twice, because of a lightning strike and a hurricane evacuation. This resulted in significant delays and cancellations of freight and passenger service throughout much of the East Coast. It is theoretically possible for a railroad to establish a backup dispatching center that would be used in the event of such a disruption, but it is unlikely railroads would consider doing so, cost-effective. FRA believes that the greater the number of miles of track controlled by a dispatching center and the higher the volume of traffic involved, the less likely it is that normal dispatching operations could be continued by alternative means, resulting in more pervasive or longer-lived service disruptions. FRA has some concern that this problem could be exacerbated if primary dispatching centers were located out of the country.

With regard to labor issues, dispatchers are typically unionized employees subject to the Railway Labor Act (45 U.S.C. 151–188) (''RLA''), which prohibits strikes over contract interpretation. Under the RLA, Congress has the power to legislate an end to a strike by United States railroad employees, and has done so in 13 rail labor contract disputes. Dispatch employees based in a foreign country, however, are not subject to the RLA and a labor dispute in that country could severely affect United States rail operations, and possibly jeopardize transportation safety.

The railroad industry carries nearly 40 percent of United States intercity freight traffic in terms of ton-miles (over 1 trillion ton-miles a year), including huge quantities of hazardous materials. By comparison, trucks carry about 28 percent of the ton-miles, and pipelines and inland water transport account for the remainder. In addition, railroads provide commuter rail service in and around many of the nation's large cities; provide the infrastructure Amtrak uses for its intercity passenger operations outside the Northeast Corridor; and provide freight service to military facilities across the country. Other modes would be able to replace only a small portion of the transportation services provided by the railroads in the short term in the event of a disruption of service affecting the national major freight railroads. A disruption affecting any one of the major railroads could, of course, have a critical impact over time through cascading impacts across the national rail system because of the extensive interchange of rail traffic among the railroads and the impact on other railroads of service disruptions on lines where they enjoy trackage or haulage rights.

X. Options

When deciding on how to address the issue of extraterritorial dispatching and all of the safety, including security concerns discussed above, FRA examined two possible options. The first option, which is reflected in the Interim Final Rule, is to bar extraterritorial dispatching with the three minor exceptions explained above. The second option is to permit extraterritorial dispatching so long as (1) the foreign-based dispatchers are subject to the same safety standards applicable to dispatchers located in the United States (and enforced by FRA or by the host country with supplementary FRA oversight), and (2) the additional safety concerns previously identified, such as security, language differences, possible labor strikes and other disruptions, are adequately addressed.

The FRA has chosen the first option as the basis for this Interim Final Rule. Banning new dispatching of United States rail traffic by dispatchers stationed outside the country except for limited fringe border operations is a simple, understandable, straightforward, ''bright line'' approach that will clearly preclude disruptions to service or safety problems resulting from the various issues discussed above and provide greater security for dispatching

[18] FRA recognizes that the Hazardous Materials Regulations require that most measurements regarding the transportation of hazardous materials be given in metric units. Under 49 CFR 171.10, in order to ensure compatibility with international transportation standards, most units of measurement in the hazardous materials regulations are expressed using the SI. This requirement should have no impact on extraterritorial dispatching, however, as SI is currently the standard for domestic railroad operations involving hazardous materials.

facilities. Implementing this approach is more certain, particularly in the short term, because it will not require the exercise of judgment, negotiations over the details of a variety of issues with railroads (and perhaps with foreign governments), or the creation of new rules or mechanisms to deal with these issues. We seek comment, however, on whether there are costs or disadvantages to this approach that FRA should consider in choosing and implementing this option, and on whether any modifications would be beneficial.

The second option could be implemented by, for example, a provision allowing a railroad to apply to FRA for a waiver of the prohibition of dispatching from abroad. The waiver mechanism might, for example, be a more detailed version of the Interim Final Rule's § 241.7. FRA would grant such a waiver only if it were satisfied (1) that the dispatchers involved in controlling United States rail traffic were subject to safety requirements (e.g., with respect to drug and alcohol testing, hours of service, and efficiency testing) fully equivalent to United States standards; (2) that FRA had full and open access to dispatch facilities located abroad, on the same basis as it has to United States facilities; (3) that, as a matter of law or binding agreement with FRA, the railroad would be subject to FRA enforcement actions with respect to the dispatching function, such as civil penalties, emergency and compliance orders, orders disqualifying employees from service for safety violations, court injunctions, etc., on an equivalent basis to railroads whose facilities were located in the United States; and (4) that measures were in place that adequately addressed security issues, labor disputes, language and other communication issues, and measurement issues. It would also be necessary to include a provision for the revocation of the waiver in the event the railroad could no longer meet its conditions, which would have the effect of reimposing the ban on dispatching United States rail traffic from abroad.

As can readily be seen, such an option is much more complex and uncertain than the first option, and it is not clear that any railroad could meet the conditions involved in such an option today. FRA seeks comment on whether it would be useful to include such a provision in the future, or whether it would be essentially futile to do so.

FRA believes that the problems with allowing widespread extraterritorial dispatching are substantial enough and are not sufficiently addressed at the present time to allow such dispatching. However, FRA recognizes that there may be reasonable solutions to these problems that may result in extraterritorial dispatching being performed as safely as domestic dispatching. Therefore, FRA is soliciting comments from interested parties on how to effectively address these concerns so that the safety of domestic rail operations is not compromised.

While FRA is soliciting comments, however, FRA believes that it is necessary to issue this Interim Final Rule in order to block the movement of dispatcher positions to foreign countries, other than for limited fringe border operations, while FRA is determining whether more extensive extraterritorial dispatching should be allowed. Given the safety-critical role that dispatchers play in railroad operations, the safety problems identified with extraterritorial dispatching, and the definite potential that some D&H dispatching functions could be moved to Canada in the very near future, extended notice-and-comment procedures are ''impracticable, unnecessary, or contrary to the public interest'' within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). The safety concerns, including security, that this rule is designed to eliminate could very well materialize in the near future before a typical notice-and-comment rulemaking process could be completed. As a consequence, FRA is proceeding directly to an Interim Final Rule.

However, in accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60-day comment period is appropriate to allow the public to comment on this Interim Final Rule. The Interim Final Rule will terminate on December 11, 2002 unless FRA takes future action to extend the sunset date. FRA solicits written comments on all aspects of this Interim Final Rule, and possible alternatives to the locational requirement of part 241. Parties favoring alternative approaches should provide detailed rationale for their recommended approach together with specific regulatory language they would like FRA to issue. FRA is also soliciting comments on whether the exception for the track segments that were extraterritorially dispatched as of December 1999 should be permanent or for a set period of time. Finally, FRA is soliciting comments on whether dispatching of fringe border operations permitted under the Interim Final Rule should be made permanent.

Based on the comments, FRA may: (1) Issue final rule amendments to the Interim Final Rule making the Interim Final Rule permanent with any substantive changes FRA determines are appropriate; (2) issue a notice proposing a new rule (a notice of proposed rulemaking), and possibly a final rule amendment extending the deadline of the Interim Final Rule while FRA completes this new rulemaking; or (3) decide that no Federal regulation is appropriate and issue a final rule removing the Interim Final Rule.

FRA also directs commenters' attention to certain issues related to the possible application of part 219 to extraterritorial dispatchers. As noted earlier, these issues are addressed in detail in an FRA notice published in the **Federal Register** today proposing amendments to part 219 concerning employees of a foreign railroad who are based outside the United States and engage in train or dispatching service in the United States.

XI. The Interim Final Rule

FRA is issuing this Interim Final Rule prohibiting extraterritorial dispatching of United States rail operations, with three minor exceptions. Under the first exception, a railroad would be allowed to conduct extraterritorial dispatching in an emergency situation for the duration of the emergency if it promptly notified the appropriate FRA Regional Administrator(s) in writing of its actions. Under the second exception, FRA would permit the continued extraterritorial dispatching of the very limited track segments in the United States that were regularly being so dispatched in December 1999. Under the third exception, railroads would be permitted to dispatch ''fringe border operations,'' as defined in the rule, from either Canada or Mexico. In addition, railroads that propose to conduct additional extraterritorial dispatching of railroad operations in the United States may apply for a waiver from the prohibitions of part 241 under subpart C of part 211.

XII. Section–By–Section Analysis

This section-by-section analysis is intended to explain the provisions of the Interim Final Rule. A number of these provisions and issues related to these provisions have been addressed earlier in this preamble. Accordingly, the preceding discussions should be considered in conjunction with those below and will be referred to as appropriate.

Section 241.1 Purpose and scope. Paragraph (a) states that the purpose of the rule is to prevent railroad accidents and incidents, and consequent injuries, deaths, and property damage, that would result from improper dispatching

of railroad operations in the United States by persons located outside of the United States. As noted earlier in the preamble, dispatchers are responsible for establishing a train's route and ensuring that the train has a clear track in front of it. As such, it is essential that dispatching be conducted as safely as possible in order to avoid incidents such as collisions and derailments that endanger train crews, other railroad employees, and the general public.

Paragraph (b) states that the rule prohibits extraterritorial dispatching of railroad operations, conducting railroad operations that are extraterritorially dispatched, and allowing track to be used for such operations, subject to certain stated exceptions. Because FRA believes that extraterritorial dispatching presents serious safety problems and because proper dispatching is such an integral part of safe railroad operations, FRA believes that widespread extraterritorial dispatching of United States rail operations should be prohibited. FRA also wants to address every possible situation by prohibiting any kind of contracting relationship that would entail extraterritorial dispatching. These prohibitions will be more fully explained elsewhere in this section-by-section analysis. Of course, railroads subject to this part may adopt and enforce additional or more stringent requirements provided they are not inconsistent with this part.

Section 241.3 Application and responsibility for compliance. This section employs what is essentially standardized regulatory language that FRA plans to use in most of its rules. Paragraphs (a) and (b) mean that railroads whose entire operations are conducted on track within an installation that is outside of the general railroad system of transportation in the United States (in this paragraph, ''general system'') are not covered by this part. Tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system would, therefore, not be subject to this part. The word ''installation'' is intended to convey the meaning of physical (and not just operational) separateness from the general system. A railroad that operates only within a distinct enclave that is connected to the general system only for the purposes of receiving or offering its own shipments is within an installation. Examples of such installations are chemical and manufacturing plants, most tourist railroads, mining railroads, and military bases. However, a rail operation conducted over the general system in a block of time during which the general system railroad is not operating is not within an installation and, accordingly, not outside of the general system merely because of the operational separation.

Paragraph (c) clarifies FRA's position that the requirements contained in this final rule are applicable not only to any ''railroad'' subject to this part but also to any ''person,'' as defined in § 241.5, that performs any function required by this final rule. Although various sections of the final rule address the duties of a railroad, FRA intends that any person who performs any action on behalf of a railroad or any person who performs any action covered by the final rule is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. For example, contractors that perform duties covered by these regulations would be required to perform those duties in the same manner as required of a railroad.

Section 241.5 Definitions. This section contains a set of definitions intended to clarify the meaning of important terms as they are used in the text of the rule. Several of the definitions involve fundamental concepts that require further discussion.

Dispatch. The first sentence of this definition is an abstract statement of its scope. FRA intends for the verb ''dispatch'' to encompass all of the functions of a ''dispatching service employee'' as that term is defined by the hours of service laws at 49 U.S.C. 21101(2), were these functions to be performed in the United States. Under 49 U.S.C. 21101(2), a ''dispatching service employee'' is defined as ''an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.'' This statutory provision has been interpreted by FRA in a statement of agency policy and interpretation codified at part 209, appendix A. Consistent with that interpretation, both the statutory definition and part 241's definition of ''dispatch'' are functional, meaning that an individual's job title is irrelevant in determining whether he or she is dispatching. In addition, whether the individual is employed by a railroad is irrelevant. However, unlike the statutory definition of ''dispatch,'' the regulatory definition makes clear that the location of the individual performing the dispatching is irrelevant to the determination of the function the individual is performing. Thus, an individual located in a foreign country who, because of his or her job duties, would be covered by the statutory definition if he or she were located in the United States would be dispatching within the meaning of § 241.5. In addition, although FRA specifically mentions yardmasters under the definition of ''dispatcher,'' FRA does not intend for this rule to cover yardmasters as a job category. Instead, yardmasters are only covered by this part when they are performing dispatching functions.

The remainder of the regulatory definition repeats or attempts to make more explicit the meaning of the statutory language. One aspect of the act of dispatching is to use hand delivery or ''an electrical or mechanical device'' to control certain movements or to issue a certain authority. The quoted phrase has been interpreted by FRA in its hours of service record keeping regulations at 49 CFR 228.5(c) as including a ''telegraph, telephone, radio, or any other electrical or mechanical device.''

Subsection (i) of the definition of ''dispatch'' clarifies the types of movements that one who dispatches controls. One such movement that FRA intends to include is the ''movement of a train,'' which is defined in another paragraph of this section as a movement of on-track equipment requiring a power brake test under parts 232 or 238. Another type of movement that FRA intends to include is the movement of certain other on-track equipment, such as specialized maintenance-of-way equipment, that is not subject to the power brake regulations; again, however, FRA intends to exclude movements of on-track equipment used in the process of sorting and grouping rail cars inside a railroad yard in order to assemble or disassemble a train.

The definition of ''dispatch'' also makes explicit that the control of the movements within the scope of the definition is accomplished in one of two ways. The first way is by the issuance of a written or verbal authority or permission that affects a railroad operation such as through movement authorities and speed restrictions and includes the following:

Track Warrants, Track Bulletins, Track and Time Authority, Direct Traffic Control Authorities, and any other methods of conveying authority for trains and engines to operate on a main track, controlled siding, or other track controlled by a [dispatcher]. OP–97–34, p. 7.

''Railroad operation'' is defined in another paragraph of this section as the movement of a train or other on-track equipment (except as specified earlier) or ''the activity that is the subject of an authority issued to a roadway worker for working limits.''

The second way that control of the movements within the scope of the definition of ''dispatch'' is achieved is ''by establishing a route through the use of a signal or train control system but not merely by aligning or realigning a switch.'' The act of aligning or realigning a switch alone is not sufficient to constitute dispatching. In order to constitute dispatching within § 241.5, aligning or realigning a switch must be accompanied by the act of setting a signal authorizing movement over a track segment. This exclusion is consistent with FRA's interpretation in Operating Practices Technical Bulletin (OP–96–04) and Operating Practices Safety Advisory (OPSA–96–03), reissued as OP–97–34 (hereinafter, ''OP–97–34'').

Subsection (ii) of the definition of ''dispatch'' clarifies that those railroad employees who issue an authority for either a roadway worker or stationary on-track equipment, or both, to occupy a certain stretch of track while performing repairs, inspections, etc., will also be covered by this rule. FRA included this section to distinguish this activity from that of authorizing movement of trains or other on-track equipment onto track.

Subsection (iii) of the definition of ''dispatch'' states another function of a dispatcher, which is to issue an authority for working limits to a roadway worker. As defined in another paragraph of this section,

[w]orking limits means a segment of track with definite boundaries established in accordance with part 214 of this chapter upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through ''exclusive track occupancy,'' ''inaccessible track,'' ''foul time'' or ''train coordination'' as defined in part 214 of this chapter.

Finally, the definition of ''dispatch'' makes explicit that the term excludes the activity of individuals carrying out a written or verbal authority or permission or an authority for working limits or operating a function of a signal system intended to be used by those individuals, such as initiating an interlocking timing device.

Dispatcher. The definition of ''dispatcher'' makes clear that the term is intended to refer to an individual who performs the function of dispatching, regardless of the individual's job title.

Emergency. An ''emergency'' under this part must be unexpected and unforeseeable and must interfere with a railroad's ability to dispatch a United States railroad operation domestically to the extent that if the operation is not dispatched extraterritorially there would be a substantial disruption in rail traffic or a significant safety risk. Planned shortages of domestic dispatchers relating to vacation scheduling or the railroad's failure to maintain an adequate list of extraboard employees and foreseeable train delays due to substandard maintenance and repair of rail equipment are not emergencies.

Typical examples of emergencies are the following: the sudden illness of a domestic dispatcher about to begin working the next duty shift when there is no other domestic employee nearby who could be called to substitute; the delay of a train operating on mainline track in reaching its station when the delay is due to the derailment of another train and the domestic dispatching office was scheduled to close until the next day after the domestic dispatcher completed his or her tour of duty; and unforeseeable system failures resulting in significant train delays when the available pool of domestic relief dispatchers is insufficient to safely handle the increased traffic density. In addition, other situations may constitute part 241 emergencies, depending on all the facts involved. The determination of whether a situation is an emergency must always be made on a case-by-case basis.

Finally, if extraterritorial dispatching service needed to abate an emergency is concluded before the end of a duty tour, the emergency provision does *not* provide license to continue the extraterritorial dispatching if an emergency no longer exists.

Extraterritorial dispatcher. The definition of ''extraterritorial dispatcher'' explains that the term refers to an individual who, while performing the function of a dispatcher from a country other than the United States, dispatches a railroad operation that takes place in the United States.

Movement of a train. This term is intended to have the same meaning as does the term ''train'' in 49 CFR 220.5.

Occupancy of a track by a roadway worker or stationary on-track equipment or both. This term refers to the physical presence of a roadway worker or stationary on-track equipment on a track for the purpose of making a repair, an inspection, or another activity not associated with the movement of a train or other on-track equipment. It is intended to cover situations where a stretch of track is being occupied for a certain period of time by roadway workers, with or without on-track equipment, for purposes not related to the movement of a train.

Roadway worker. This term is intended to have the meaning it has in 49 CFR §§ 214.7 and 220.5.

Section 241.7 Waivers. This section sets forth the procedures for seeking waivers of compliance with the prohibitions and requirements of this rule. Requests for such waivers may be filed by any interested party. In reviewing such requests, FRA conducts investigations to determine if a deviation from the general prohibitions and requirements can be made without compromising or diminishing rail safety. This section is consistent with the general waiver provisions contained in other Federal regulations issued by FRA. FRA recognizes that circumstances may arise when conduct of extraterritorial dispatching that does not fall within one of the exceptions to the prohibition contained in this rule is appropriate and in the public interest.

Section 241.9 Prohibition against extraterritorial dispatching; exceptions.

Section 241.11 Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.

Section 241.13 Prohibition against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.

These sections contain a series of three prohibitions, each containing three exceptions and a provision on liability for violation of the prohibition. To promote compliance, each provision imposes a strict liability standard. Actual or constructive knowledge of the facts constituting the violation is not required to establish a violation. For example, it is not necessary for a railroad conducting a railroad operation to know that the operation is being extraterritorially dispatched in order for the railroad to violate § 241.11.

Section 241.9(a) establishes a general rule barring a railroad from requiring or permitting one of its employees or one of its contractors' employees to dispatch a railroad operation that occurs in the United States while the railroad's employee (or railroad contractor's employee) is located outside the United States. A separate violation occurs for each railroad operation so dispatched; each day the violation continues is a separate offense. ''Railroad operation'' is defined in § 241.5. A dispatcher working in a foreign country and controlling only railroad operations in that country would not violate § 241.9(a). Likewise, a dispatcher located in the United States and controlling train operations in another country would not violate § 241.9(a), although nothing in this rule authorizes

such a practice where it contravenes the domestic law or policy of the country where the railroad operations are conducted.

Section 241.11(a) creates a general prohibition against performing a railroad operation on track in the United States if the railroad operation is dispatched by an individual located outside the United States. A separate violation occurs for each railroad operation performed that was so dispatched; each day the violation continues is a separate offense.

Section 241.13(a) generally forbids a track owner from requiring or permitting a segment of track that it owns to be used for a railroad operation in the United States that is controlled by a dispatcher in another country. A separate violation occurs for each railroad operation so dispatched that was permitted to occur on the owner's track; each day the violation continues is a separate offense.

There are three basic exceptions to each of these three general prohibitions. First, under paragraph (b) of §§ 241.9–241.13, extraterritorial dispatching of railroad operations that occur in the United States is permitted in the event of an emergency. The term ''emergency'' is defined in § 241.5, which has been discussed earlier. The railroad must notify the FRA Regional Administrator for the region in which the railroad operation occurs, in writing as soon as feasible, either on paper or by electronic mail, that the railroad is conducting such extraterritorial dispatching. If the operation occurs in more than one region, the FRA Regional Administrator for each of the regions in which the operation occurs must be notified. Notification need not necessarily be in advance of the performance of the extraterritorial dispatching. The exception is allowed only for the period of time that the emergency exists. If a railroad continues extraterritorial dispatching after the emergency is over, the railroad is in violation of § 241.9(a).

Second, under paragraph (c) of §§ 241.9–241.13, extraterritorial dispatching of railroad operations that occur in the United States is allowed on the very limited segments of track that were regularly being so dispatched in December 1999, if the extraterritorial dispatching of those track segments is conducted from the same foreign country or territory or possession of the United States where the extraterritorial dispatching was done in December 1999. Paragraph (c) does not impose a limit on the volume of railroad operations over such track segments that may be dispatched extraterritorially.

Third, under paragraph (d) of §§ 241.9–241.13, dispatching from Canada or Mexico of a rail line located in the United States is permissible provided the length of the United States trackage being extraterritorially dispatched is no more than 100 miles, any train being so dispatched is under the control of the same assigned crew for the entire trip over U.S. trackage, and the train movement either both originates and terminates in the foreign country without the pick up, set out, or interchange of cars in the U.S. or is under the exclusive control of a single dispatching district, or ''desk'', and the portion of the line being extraterritorially dispatched extends no farther into the U.S. than the first of any of the following locations: an interchange point; signal control point; junction of two rail lines; established crew change point; yard or yard limits location, inspection point for U.S. Customs, Immigration and Naturalization Service, Department of Agriculture, or other government inspection; or location where there is a change in the method of train operations. In addition, FRA recognizes an exception to the single train crew requirement if an unforeseen circumstance, such as an equipment failure, accident, or casualty or incapacitation of a crew member necessitates another crew assuming control of the train while it is operating on U.S. track.

Essentially, paragraph (d) recognizes that it will not always be practical or economical to conduct a ''hand-off'' of train operations between a U.S. and a foreign dispatcher that normally would be required under Part 241, especially when the length of U.S. trackage involved is small and the train movements on that trackage make no stops in the U.S. FRA believes that the safety and security risks posed by these ''fringe border operations'' are minimal and, therefore, in order to promote the smooth flow of commerce across international borders, they should be permitted, but only to the extent necessary.

Paragraph (e) of §§ 241.9–241.13 discusses liability for violations of those sections. As provided in § 241.9(e), liability for extraterritorial dispatching of a railroad operation in the United States in violation of § 241.9 is on the entity that employs the individual who performed the extraterritorial dispatching, typically a railroad or a contractor to a railroad (if any), and if the employing entity is a contractor to a railroad, liability is also on the railroad. For example, if an employee of a railroad contractor performs the extraterritorial dispatching, FRA may hold either the contractor or the railroad or both liable for the violation (in addition to the individual employee and any other entity that committed the violation or caused the violation, as provided in § 241.3(c)).

As stated in § 241.11(e), liability for conducting a railroad operation that is extraterritorially dispatched in violation of § 241.11 is on the entity that conducts the operation, typically a railroad or a contractor to a railroad. For example, if employees of a railroad contractor engage in the movement of a train that is extraterritorially dispatched and not within the exceptions of paragraphs (b), (c), or (d), then FRA may hold either the contractor or the railroad or both liable for the violation (in addition to the individual train crewmembers and any other entity that committed the violation or caused the violation, as provided in § 241.3(c)).

Finally, as provided in § 241.13(e), liability for requiring or permitting the conduct of a railroad operation that is so dispatched over a segment of track is on the owner of the track segment. For purposes of § 241.13, the track owner includes the owner of the track segment, a person assigned responsibility for the track segment under § 213.5(c), and a railroad operating the track segment pursuant to a directed service order issued by the STB under 49 U.S.C. 11123, during the time that the directed service order is in effect. FRA may hold the track owner, the assignee, or the railroad operating the track under a directed service order, or some or all of such entities liable for a violation of § 241.13 (in addition to the individuals and any other entity that committed the violation or caused the violation, as provided in § 241.3(c)). For example, if the track owner (Company A) has assigned responsibility for the track under § 213.5(c) to Company B and the track is used by a train that is dispatched by a dispatcher located outside of the United States, not within the exceptions of paragraphs (b), (c), or (d), then FRA may assess a civil penalty for violation of § 241.13 against either Company B or Company A, or both.

In a given instance in which an individual outside the United States dispatches a railroad operation that takes place in the United States (not within the exceptions of paragraphs (b), (c), or (d)), three regulatory prohibitions have been violated: §§ 241.9, 241.11, and 241.13. If one single entity dispatches and conducts the railroad operation and owns the track on which the railroad operation occurs, that entity may be assessed a separate civil penalty for each of the three sections violated.

On the other hand, if the three functions are performed by a total of three different entities, the entity that performed the function would be assessed a penalty only for the section it violated. As a matter of discretion, FRA may also cite the dispatching railroad for causing the violation of § 241.11(a) by the operating railroad or § 241.13(a) by the track owner in cases where the dispatching railroad fails to notify the FRA Regional Administrator of each region where the track is located of an emergency, and in other cases.

Section 241.15 Geographical boundaries of FRA's regions and addresses of FRA's regional headquarters.

Under §§ 241.9(b), 241.11(b), and 241.13(b), FRA requires a railroad that, because of an emergency situation, must extraterritorially dispatch a domestic railroad operation to inform the Regional Administrator of the FRA region(s) where the track over which the operation was conducted is located. The written notification must summarize the circumstances of the emergency and the extraterritorial dispatching and must be made either on paper or by electronic mail. In order to facilitate the notification process, Appendix B lists FRA's eight regions and the States that are included in those regions as well as the addresses of the eight regional headquarters where the notification(s) must be sent. If the emergency situation requires extraterritorial dispatching of a railroad operation that takes place in more than one of FRA's regions, the railroad conducting the emergency dispatching must provide this written notification of the emergency to the Regional Administrator for each of the affected regions.

Section 241.17 Penalties and other consequences for noncompliance.

This section identifies three of the sanctions that may be imposed upon a person for violating a requirement of part 241: civil penalties, disqualification, and criminal penalties.

Paragraph (a) on civil penalties parallels the civil penalty provisions included in numerous other safety regulations issued by FRA. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $22,000 per violation may be assessed. *See* part 209, appendix A. In addition, each day a violation continues will constitute a separate offense. Civil penalties for violation of part 241 are authorized by 49 U.S.C. 21301, 21302, and 21304 and by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–358, 378, Apr. 26, 1996), which requires agencies to adjust for inflation the maximum civil monetary penalties within the agencies' jurisdiction. Consequently, the resulting $11,000 and $22,000 maximum penalties were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws. In addition to the civil penalty provision at § 241.17(a), this final rule includes a schedule of civil penalties for specific violations of part 241 as appendix A to this part.

Paragraph (b) provides that an individual who fails to comply with a provision of this part or causes the violation of a provision of this part may be prohibited from performing safety-sensitive service in accordance with FRA's enforcement procedures found in subpart D, part 209.

Paragraph (c) of § 241.17 provides that a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying a report required by these regulations, here, a report to the appropriate FRA Regional Administrator(s) concerning extraterritorial dispatching performed under a claim that it was performed to deal with an emergency. Section 21311(a) of title 49, United States Code, reads as follows:

(a) Records and Reports Under Chapter 201.—A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person knowingly and willfully—

(1) makes a false entry in a record or report required to be made or preserved under chapter 201 of this title;

(2) destroys, mutilates, changes, or by another means falsifies such a record or report;

(3) does not enter required specified facts and transactions in such a record or report;

(4) makes or preserves such a record or report in violation of a regulation prescribed or order issued under chapter 201 of this title; or

(5) files a false record or report with the Secretary of Transportation.

FRA believes that the inclusion of these provisions for failure to comply with the regulations is important in ensuring that compliance is achieved.

Section 241.19 Preemptive effect. Section 241.17 informs the public of FRA's views regarding what will be the preemptive effect of the Interim Final Rule. While the presence or absence of such a section does not in itself affect the preemptive effect of an interim final rule, it informs the public about the statutory provision that governs the preemptive effect of the rule. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard which provision is not incompatible with a Federal law, regulation, or order and does not unreasonably burden interstate commerce. With the exception of a provision that is not incompatible with Federal law, not an unreasonable burden on interstate commerce, and directed at an essentially local safety hazard, 49 U.S.C. 20106 will preempt any State regulatory agency rule covering the same subject matter as the regulations in this final rule.

Section 241.21 Information collection. This provision shows which sections of this part have been approved by the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* A more detailed discussion of the information collection requirements in this part is provided below.

Section 241.23 Termination of this part.

This provision provides that the Interim Final Rule will terminate 365 days after its effective date unless this date is extended by FRA. Based on the comments, FRA may: (1) Issue final rule amendments to the Interim Final Rule making the Interim Final Rule permanent with any substantive changes FRA determines are appropriate; (2) issue a notice proposing a new rule (a notice or proposed rulemaking), and possibly final rule amendments to the Interim Final Rule extending the deadline of the Interim Final Rule while FRA completes this new rulemaking; or (3) decide that no Federal regulation is appropriate, allow the Interim Final Rule to terminate, and perhaps issue a final rule removing the Interim Final Rule.

Appendix A—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties to be used in connection

with this part. Because the penalty schedule is a statement of agency policy, notice and comment are not required prior to its issuance. *See* 5 U.S.C. 553(b)(3)(A). Commenters are invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that should subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

Appendix B—Geographic Boundaries of FRA's Regions and Addresses of FRA's Regional Headquarters

This appendix contains a list of FRA's eight regions and the States that are included in those regions as well as the addresses of the eight regional headquarters where notification of emergency extraterritorial dispatching of domestic operations must be sent.

XIII. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* FRA invites comments on this regulatory evaluation.

Public and private initiatives have successfully improved the safety of rail operations by reducing the number and severity of incidents, accidents, and resulting casualties. However, dilution of these standards and initiatives to accommodate increasing transborder rail traffic creates the potential for an increase in injuries and fatalities resulting from rail accidents. FRA expects that the locational requirement for dispatching of United States rail operations contained in the Interim Final Rule, or any future program permitting dispatching from abroad under equivalent standards, will prevent the dilution of the standards and initiatives that have led to safety levels currently experienced in the United States.

FRA expects that overall the rule will not impose a significant cost on the rail industry over the next twenty years. FRA believes it is reasonable to expect that several injuries and fatalities will be avoided as a result of implementing this Interim Final Rule. FRA also believes that the safety of rail operations will be compromised if this rule is not implemented.

The following table presents estimated twenty-year *monetary* impacts associated with the new locational requirement for dispatching of United States rail operations.

Description	Estimated 20-year costs (NPV)
Labor rate differential (foregone savings)—	$7,386,569
Additional dispatcher supervisors (cost of rule)—	220,398
Emergency situation notification (cost of rule)— ...	3,811
Dismissed employee compensation (avoided cost)—	(9,433,880)
Total Net Cost (NPV rounded)	(1,823,102)

The basis for these dollar figures is found in section 7.0 of the regulatory evaluation on file at FRA in the docket for this rulemaking. Certain costs resulting from the inability to achieve economies of scale are not quantified in this analysis. The savings from avoiding severance payments are finite and are incurred in the early years; the costs in terms of cost reductions not achieved are experienced in every year and potentially infinitely. The longer the term of the analysis, the higher the level of costs would be relative to benefits. For the twenty-year term of this analysis, net costs are expected to be negative. However, FRA believes that the safety benefits of the rule justify the long-term costs (the costs incurred after the first twenty years of this analysis).

As previously noted in this preamble, FRA has pointed out that the problems associated with permitting extraterritorial dispatching of United States rail operations include the following: hours of service, operating rules compliance, substance abuse, differences in language and units of measurement, security issues, and other concerns. Because FRA has no assurance that these problems can be satisfactorily addressed, FRA believes that the locational requirement imposed by the Interim Final Rule is the best way to ensure railroad safety.

Railroad accidents caused by error in human judgment or other human factors account for approximately a third of all reportable train accidents each year. Whereas errors on the part of train operators are typically limited in scope to the train the operator controls, errors by dispatchers, who usually control vast territories and the movements of many trains, can be truly disastrous.[19] In the absence of the protections afforded by current Federal statutory and regulatory requirements covering domestic dispatchers, FRA believes that additional dispatcher error-related accidents would occur were trains to be controlled by extraterritorial dispatchers. Given that the total costs of this Interim Final Rule are expected to be very low, the avoidance of only a few minor accidents or one major accident would justify this rule. A more detailed explanation of the benefits of this rule as well as a summary of the cost-benefit analysis can be found in Sections 8 and 9 of the regulatory evaluation on file at FRA in the docket for this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket a Regulatory Flexibility Assessment (RFA), which assesses the small entity impact. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (RFA), FRA has published an interim policy that formally establishes ''small entities'' as being railroads that meet the line-haulage revenue requirements of a

[19] For example, on June 22, 1997, two freight trains collided head-on in Devine, Texas. The trains were operating on single main track with passing sidings in nonsignalized territory in which train movement was governed by conditional track warrant control authority through a dispatcher. A conductor, an engineer, and two unidentified individuals were killed in the derailment and subsequent fire. The National Transportation Safety Board determined that the probable cause of the accident was the failure of the third-shift dispatcher to communicate the correct track warrant information to one of the train crews and to verify the accuracy of the read-back information.

Class III railroad. 62 FR 43024 (Aug. 11, 1997). For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity.

The RFA concludes that this final rule would not have a significant economic impact on a substantial number of small entities. FRA further certifies that this Interim Final Rule is not expected to have a significant economic impact on a substantial number of small entities.

About 645 of the approximately 700 railroads in the United States are considered small businesses by FRA. The Interim Final Rule applies to all railroads except (1) railroads that operate only on track that is within an installation that is not part of the general railroad system of transportation and (2) urban rapid transit operations that are not connected to the general railroad system. Approximately 25 tourist and museum railroads that are small businesses do not operate on the general railroad system. Therefore, this rule will affect approximately 620 small entities. Small railroads that will be affected by the final rule provide less than 10 percent of the industry's employment, own about 10 percent of the track, and operate less than 10 percent of the ton-miles.

The American Shortline and Regional Railroad Association (ASLRRA) represents the interests of most small freight railroads and some excursion railroads operating in the United States. According to the ASLRRA, none of its members has shown any interest in relocating their dispatching to foreign countries or in contracting out their dispatching functions to entities in foreign countries. Because tourist, scenic, historic, excursion, and other small railroads generally do not own the right-of-way on which they operate and rely on the host railroad to dispatch their trains, these small railroads would not be affected by the United States locational requirement for dispatching of United States rail operations. Nevertheless, small rail operators have an opportunity to comment on this Interim Final Rule.

FRA field offices and the ASLRRA engage in various outreach activities with small railroads. For instance, when new regulations are issued that affect small railroads, FRA briefs the ASLRRA, which in turn disseminates the information to its members and provides training as appropriate. When a new railroad is formed, FRA safety representatives visit the operation and provide information regarding applicable safety regulations. The FRA regularly addresses questions and concerns regarding regulations raised by railroads. Because this rule is not anticipated to affect small railroads, FRA is not providing alternative treatment for small railroads under this rule.

C. Paperwork Reduction Act

The information collection requirements in this Interim Final Rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

49 CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
241.7—Waivers	5 railroads	1 waiver petition	4 hours	4 hours	$152.
241.9—Prohibition against extraterritorial dispatching; exceptions.	5 railroads	1 notification	8 hours	8 hours	$360.
241.11—Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.	5 railroads	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.
241.13—Prohibitions against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.	5 railroads	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 17, Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this interim final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this Interim Final Rule.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**, and text will be added to § 241.21, Information collection.

D. Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the

preamble to the regulation as it is to be issued in the **Federal Register**, provide[] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency'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 the State and local officials have been met * * *.''

When issuing the Interim Final Rule in this proceeding, FRA has adhered to Executive Order 13132. Normally, FRA engages in the required Federalism consultation during the early stages of the rulemaking through meetings of the full Railroad Safety Advisory Committee (''RSAC''), on which several representatives of groups representing State and local officials sit. However, FRA determined that, because the possibility exists that at least one railroad may engage in extensive extraterritorial dispatching in the very near future, these issues have been addressed without the benefit of a presentation to the full RSAC. In order to comply with Executive Order 13132, FRA sent a letter soliciting comment on the Federalism implications of this Interim Final Rule and the NPRM involving part 219 that FRA is currently working on nine groups designated as representatives for various State and local officials. The nine organizations were as follows: the American Association of State Highway and Transportation Officials (AASHTO), the Association of State Rail Safety Managers, the Council of State Governments, The National Association of Counties, the National Association of Towns and Townships, the National Conference of State Legislatures, the National Governors' Association, the National League of Cities, and the U.S. Conference of Mayors. In addition, FRA representatives had informal discussions with representatives of some of those groups. During one such consultation, a representative of AASHTO expressed confidence that FRA and State interests would closely coincide on these issues. He noted that the September 2000 meeting of AASHTO's Standing Committee on Rail Transportation would include a significant discussion of the pending STB proceeding (involving the proposed consolidation of CN and BNSF), with the implication that FRA's rulemakings may be a current topic at that time. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions Categorically Excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The Interim Final Rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

For the reasons set forth in the preamble, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations, by adding Part 241 to read as follows:

PART 241—UNITED STATES LOCATIONAL REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

Sec.

241.1 Purpose and scope.
241.3 Application and responsibility for compliance.
241.5 Definitions.
241.7 Waivers.

241.9 Prohibition against extraterritorial dispatching; exceptions.
241.11 Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.
241.13 Prohibition against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.
241.15 Geographical boundaries of FRA's regions and addresses of FRA's regional headquarters.
241.17 Penalties and other consequences for noncompliance.
241.19 Preemptive effect.
241.21 Information collection.
241.23 Termination of this part.
Appendix A to Part 241—Schedule of Civil Penalties
Appendix B to Part 241—Geographical Boundaries of FRA's Regions and Addresses of FRA's Regional Headquarters

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 241.1 Purpose and scope.

(a) The purpose of this part is to prevent railroad accidents and incidents, and consequent injuries, deaths, and property damage, that would result from improper dispatching of railroad operations in the United States by individuals located outside of the United States.

(b) This part prohibits extraterritorial dispatching of railroad operations, conducting railroad operations that are extraterritorially dispatched, and allowing track to be used for such operations, subject to certain stated exceptions. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 241.3 Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) Although the duties imposed by this part are generally stated in terms of a duty of a railroad, each person, including a contractor for a railroad, who performs a function covered by this part, shall perform that function in accordance with this part.

§ 241.5 Definitions.

As used in this part:

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Dispatch means:

(1) To perform a function that would be classified as a duty of a ''dispatching service employee,'' as that term is defined by the hours of service laws at 49 U.S.C. 21101(2), if the function were to be performed in the United States. In particular, *dispatch* means to use a telegraph, telephone, radio, or any other electrical or mechanical device, or hand delivery—

(i) To control the movement of a train or other on-track equipment by the issuance of a written or verbal authority or permission affecting a railroad operation or by establishing a route through the use of a signal or train control system but not merely by aligning or realigning a switch; or

(ii) To control the occupancy of a track by a roadway worker or stationary on-track equipment, or both; or

(iii) To issue an authority for working limits to a roadway worker.

(2) The term *dispatch* does not include the action of personnel in the field effecting implementation of a written or verbal authority or permission affecting a railroad operation or an authority for working limits to a roadway worker, or operating a function of a signal system designed for use by those personnel (e.g., initiating an interlocking timing device).

Dispatcher means a train dispatcher, control operator, yardmaster, or other individual who dispatches.

Emergency means an unexpected and unforeseeable event or situation that affects a railroad's ability to use a dispatcher in the United States to dispatch a railroad operation in the United States and that, absent the railroad's use of an extraterritorial dispatcher to dispatch the railroad operation, would either materially disrupt rail service or pose a substantial safety hazard.

Employee means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

Extraterritorial dispatcher means a dispatcher who, while located outside of the United States, dispatches a railroad operation that occurs in the United States.

Extraterritorial dispatching means the act of dispatching, while located outside of the United States, a railroad operation that occurs in the United States.

FRA means the Federal Railroad Administration, United States Department of Transportation.

Movement of a train means the movement of one or more locomotives coupled with or without cars, requiring an air brake test in accordance with part 232 or part 238 of this chapter, except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.

Occupancy of a track by a roadway worker or stationary on-track equipment or both refers to the physical presence of a roadway worker or stationary on-track equipment, or both, on a track for the purpose of making an inspection, repair, or another activity not associated with the movement of a train or other on-track equipment.

Person means an entity of a type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; an owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; an independent contractor providing goods or services to a railroad; and an employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any person providing such transportation, including—

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad contractor means a contractor to a railroad or a subcontractor to a contractor to a railroad.

Railroad operation means the movement of a train or other on-track equipment (other than on-track equipment used in a switching operation or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up a train), or the activity that is the subject of an authority issued to a roadway worker for working limits.

Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include

inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities, or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts.

State means a State of the United States of America or the District of Columbia.

United States means all of the States.

Working limits means a segment of track with definite boundaries established in accordance with part 214 of this chapter upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through ''exclusive track occupancy,'' ''inaccessible track,'' ''foul time'' or ''train coordination'' as defined in part 214 of this chapter.

§ 241.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions that the Administrator deems necessary.

§ 241.9 Prohibition against extraterritorial dispatching; exceptions.

(a) *General.* Except as provided in paragraphs (b), (c) and (d) of this section, a railroad subject to this part shall not require or permit a dispatcher located outside the United States to dispatch a railroad operation that occurs in the United States if the dispatcher is employed by the railroad or by a contractor to the railroad.

(b) *Emergencies.* (1) In an emergency situation, a railroad may require or permit one of its dispatchers located outside the United States to dispatch a railroad operation that occurs in the United States, provided that:

(i) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the railroad operation was conducted, in writing as soon as practicable, of the emergency, and

(ii) The extraterritorial dispatching is limited to the duration of the emergency.

(2) Written notification may be made either on paper or by electronic mail.

(c) *Grandfathering.* A railroad may require or permit one of its dispatchers located in a foreign country or in a territory or possession of the United States to dispatch a railroad operation that occurs on a track segment located in the United States, the operation of which track segment was normally controlled during the month of December 1999 by a dispatcher located in that foreign country or that territory or possession of the United States.

(d) *Fringe border operations.* In order to facilitate the safety and efficiency of international train movements, railroad dispatchers located in Canada and Mexico may dispatch additional railroad operations in the United States immediately adjacent to their borders if all of the following conditions apply:

(1) The United States trackage being dispatched does not exceed 100 route miles;

(2) Except for unforeseen circumstances such as equipment failure, accident, casualty or incapacitation of a crew member, each train must be under the control of the same assigned crew for the entire trip over the trackage; and

(3)(i) Train movements on the rail line both originate and terminate in either Canada or Mexico without the pick up, set out, or interchange of cars in the United States; in other words, the traffic on the rail line is ''bridge traffic'' only; or

(ii) In the case of any other rail line, the rail line involved is—

(A) Under the exclusive control of a single dispatching district (''desk''); and

(B) The portion of the line being dispatched extends no farther into the United States than the first of any of the following locations: interchange point; signal control point; junction of two rail lines; established crew change point; yard or yard limits location; inspection point for U.S. Customs, Immigration and Naturalization Service, Department of Agriculture, or other governmental inspection; or location where there is a change in the method of train operations.

(e) *Liability.* The Administrator may hold either the railroad that employs the dispatcher or the railroad contractor that employs the dispatcher, or both, responsible for compliance with this section and subject to civil penalties under § 241.17.

§ 241.11 Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.

(a) *General.* Except as provided in paragraphs (b), (c) and (d) of this section, a railroad subject to this part shall not conduct, or contract for the conduct of, a railroad operation in the United States that is dispatched from a location outside of the United States.

(b) *Emergencies.* (1) In an emergency situation, a railroad may conduct, or contract for the conduct of, a railroad operation in the United States that is dispatched from a location outside of the United States, provided that:

(i) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the railroad operation was conducted, in writing as soon as practicable, of the emergency and

(ii) The extraterritorial dispatching is limited to the duration of the emergency.

(2) Written notification may be made either on paper or by electronic mail.

(c) *Grandfathering.* A railroad may conduct, or contract for the conduct of, a railroad operation on a track segment in the United States that is dispatched from a foreign country or from a territory or possession of the United States if the railroad operation occurs on a track segment located in the United States, the operation of which track segment was normally controlled during the month of December 1999 by a dispatcher located in that foreign country or that territory or possession of the United States.

(d) *Fringe border operations.* In order to facilitate the safety and efficiency of international train movements, a railroad may conduct, or contract for the conduct of, the dispatching of railroad operations in the United States from Canada or Mexico immediately adjacent to their borders if all of the following conditions apply:

(1) The United States trackage being dispatched does not exceed 100 route miles;

(2) Except for unforeseen circumstances such as equipment failure, accident, casualty or incapacitation of a crew member, each train must be under the control of the same assigned crew for the entire trip over the trackage; and

(3)(i) Train movements on the rail line both originate and terminate in either Canada or Mexico without the pick up, set out, or interchange of cars in the United States; in other words, the traffic on the rail line is ''bridge traffic'' only; or

(ii) In the case of any other rail line, the rail line involved is—

(A) Under the exclusive control of a single dispatching district (''desk''); and

(B) The portion of the line being dispatched extends no farther into the United States than the first of any of the following locations: interchange point;

signal control point; junction of two rail lines; established crew change point; yard or yard limits location; inspection point for U.S. Customs, Immigration and Naturalization Service, Department of Agriculture, or other governmental inspection; or location where there is a change in the method of train operations.

(e) *Liability.* The Administrator may hold either the railroad that conducts the railroad operation or the railroad contractor that conducts the operation, or both, responsible for compliance with this section and subject to civil penalties under § 241.17.

§ 241.13 Prohibition against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.

(a) *General.* Except as provided in paragraphs (b), (c) and (d) of this section, an owner of railroad track located in the United States shall not require or permit the track to be used for a railroad operation that is dispatched from outside the United States.

(b) *Emergencies.* (1) In an emergency situation, an owner of railroad track located in the United States may require or permit the track to be used for a railroad operation that is dispatched from outside the United States, provided that:

(i) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the operation was conducted, in writing as soon as practicable, of the emergency, and

(ii) The extraterritorial dispatching is limited to the duration of the emergency.

(2) Written notification may be made either on paper or by electronic mail.

(c) *Grandfathering.* An owner of a track segment located in the United States, the operation of which track segment was normally controlled during the month of December 1999 by a dispatcher located in a foreign country or in a territory or possession of the United States, may require or permit the track segment to be used for a railroad operation that is dispatched from that foreign country or that territory or possession of the United States.

(d) *Fringe border operations.* In order to facilitate the safety and efficiency of international train movements, an owner of railroad track located in the United States immediately adjacent to the border of either Canada or Mexico may require or permit the track to be used for a railroad operation that is dispatched from Canada or Mexico if all of the following conditions apply:

(1) The United States trackage being dispatched does not exceed 100 route miles;

(2) Except for unforeseen circumstances such as equipment failure, accident, casualty or incapacitation of a crew member, each train must be under the control of the same assigned crew for the entire trip over the trackage; and

(3)(i) Train movements on the rail line both originate and terminate in either Canada or Mexico without the pick up, set out, or interchange of cars in the United States; in other words, the traffic on the rail line is ''bridge traffic'' only; or

(ii) In the case of any other rail line, the rail line involved is—

(A) Under the exclusive control of a single dispatching district (''desk''); and

(B) The portion of the line being dispatched extends no farther into the United States than the first of any of the following locations: interchange point; signal control point; junction of two rail lines; established crew change point; yard or yard limits location; inspection point for U.S. Customs, Immigration and Naturalization Service, Department of Agriculture, or other governmental inspection; or location where there is a change in the method of train operations.

(e) *Liability.* The Administrator may hold either the track owner or the assignee under § 213.5(c) of this chapter (if any), or both, responsible for compliance with this section and subject to civil penalties under § 241.17. A common carrier by railroad that is directed by the Surface Transportation Board to provide service over the track in the United States of another railroad under 49 U.S.C. 11123 is considered the owner of that track for the purposes of the application of this section during the period that the directed service order remains in effect.

§ 241.15 Geographical boundaries of FRA's regions and addresses of FRA's regional headquarters.

For purposes of providing emergency notification to the appropriate FRA Regional Administrator(s) as required by §§ 241.9(b), 241.11(b), and 241.13(b), the geographical boundaries of FRA's eight regions and the addresses for the regional headquarters of those regions are listed in Appendix B to this part.

§ 241.17 Penalties and other consequences for noncompliance.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

(b) An individual who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from safety-sensitive service in accordance with part 209 of this chapter.

(c) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 241.19 Preemptive effect.

Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

§ 241.21 Information collection. [Reserved]

§ 241.23 Termination of this part.

(a) This part is effective from January 10, 2002 through January 10, 2003.

Appendix A to part 241

SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
241.9:		
(a) Requiring or permitting extraterritorial dispatching of a railroad operation	$7,500	$11,000
(b) Failing to notify FRA about extraterritorial dispatching of a railroad operation in an emergency situation	5,000	7,500

SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
241.11 Conducting a railroad operation that is extraterritorially dispatched:		
(a)(i) Generally	7,500	11,000
(a)(ii) In an emergency situation—where dispatching railroad fails to notify FRA of the extraterritorial dispatching	2,500	5,000
241.13 Requiring or permitting track to be used for the conduct of a railroad operation that is extraterritorially dispatched:		
(a)(i) Generally	7,500	11,000
(a)(ii) In an emergency situation—where dispatching railroad fails to notify FRA of the extraterritorial dispatching	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304 and 49 CFR part 209, appendix A.

[2] Further designations for certain provisions, not found in the CFR citation for those provisions, are FRA Office of Chief Counsel computer codes added as a suffix to the CFR citation and used to expedite imposition of civil penalties for violations. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined designation cited in the civil penalty demand letter.

Appendix B to part 241–Geographical Boundaries of FRA'S Regions and Addresses of FRA'S Regional Headquarters

The geographical boundaries of FRA's eight regions and the addresses for the regional headquarters of those regions are as follows:

(a) *Region 1* consists of Maine, Vermont, New Hampshire, New York, Massachusetts, Rhode Island, Connecticut, and New Jersey. The mailing address of the Regional Headquarters is: 55 Broadway, Room 1077, Cambridge, Massachusetts 02142. The electronic mail (E-mail) address of the Regional Administrator for Region 1 is: *Mark.McKeon@fra.dot.gov.*

(b) *Region 2* consists of Pennsylvania, Delaware, Maryland, Ohio, West Virginia, Virginia, and Washington, DC The mailing address of the Regional Headquarters is: Two International Plaza, Suite 550, Philadelphia, Pennsylvania 19113. The E-mail address of the Regional Administrator for Region 2 is: *David.Myers@fra.dot.gov.*

(c) *Region 3* consists of Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Florida. The mailing address of the Regional Headquarters is: Atlanta Federal Center, 61 Forsythe Street, S.W., Suite 16T20, Atlanta, Georgia 30303. The E-mail address of the Regional Administrator for Region 3 is: *Fred.Dennin@fra.dot.gov.*

(d) *Region 4* consists of Minnesota, Wisconsin, Michigan, Illinois, and Indiana. The mailing address of the Regional Headquarters is: 111 North Canal Street, Suite 655, Chicago, Illinois 60606. The E-mail address of the Regional Administrator for Region 4 is: *Laurence.Hasvold@fra.dot.gov.*

(e) *Region 5* consists of New Mexico, Oklahoma, Arkansas, Louisiana and Texas. The mailing address of the Regional Headquarters is: 8701 Bedford-Euless Road, Suite 425, Hurst, Texas 76053. The E-mail address of the Regional Administrator for Region 5 is: *John.Megary@fra.dot.gov.*

(f) *Region 6* consists of Nebraska, Iowa, Colorado, Kansas, and Missouri. The mailing address of the Regional Headquarters is: 1100 Maine Street, Suite 1130, Kansas City, Missouri 64105. The E-mail address of the Regional Administrator for Region 6 is: *Darrell.Tisor@fra.dot.gov.*

(g) *Region 7* consists of California, Nevada, Utah, Arizona, and Hawaii. The mailing address of the Regional Headquarters is: 801 I Street, Suite 466, Sacramento, California 95814. The electronic mail (E-mail) address of the Regional Administrator for Region 7 is: *Alvin.Settje@fra.dot.gov.*

(h) *Region 8* consists of Washington, Idaho, Montana, North Dakota, Oregon, Wyoming, South Dakota, and Alaska. The mailing address of the Regional Headquarters is: Murdock Executive Plaza, 703 Broadway, Suite 650, Vancouver, Washington 98660. The E-mail address of the Regional Administrator for Region 8 is: *Dick.Clairmont@fra.dot.gov.*

Issued in Washington, DC, on November 30, 2001.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 01–30185 Filed 12–10–01; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 66, No. 238
Tuesday, December 11, 2001

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM–72–5]

Nuclear Energy Institute; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–72–5) submitted by the Nuclear Energy Institute (NEI). The petitioner requested that the NRC amend its regulations governing the issuance of Certificates of Compliance (CoCs) for dry cask storage of spent nuclear fuel under a general license. The petitioner requested that the NRC eliminate notice and comment rulemaking from the approval process for initial cask designs and for CoC amendments. The petitioner proposed an alternative approval process which provided for approval by orders after a period for public comment, except in the case of amendments for which a determination of no significant impacts was reached. This type of amendment could be issued as immediately effective with a post-issuance comment period.

The Commission is denying the petition for rulemaking because improvements in the approval process have significantly decreased the length of time for approval of CoC amendments, making regulatory change unnecessary; the petitioner's approval process may require the offer of an opportunity for a hearing which could eliminate any efficiency obtained by the elimination of notice and comment rulemaking; and the Commission's performance goals would be better served by retaining the present process than by adopting the process suggested by petitioner.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letter to the petitioner may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the NRC's rulemaking website (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or it there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail *mlh1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On June 9, 2000 (65 FR 36647), the NRC published a notice of receipt of a petition for rulemaking filed by the Nuclear Energy Institute (NEI) on April 19, 2000. The petitioner supplemented the petition in an August 23, 2000 letter. The petition requests that the NRC amend its regulations at 10 CFR Part 72 governing the issuance of Certificates of Compliance (CoCs) for cask designs for dry cask storage of spent nuclear fuel for use under a general license. The petition proposes to eliminate rulemaking as the method for issuing and amending CoCs. Thus, the primary aim of the petition is to remove § 72.214, which lists approved cask designs. Under the petitioner's proposal, the NRC would continue to approve cask designs after a safety review but would issue and amend CoCs by order rather than by rulemaking.

The petitioner proposes an alternative process for providing an opportunity for public input on CoC and CoC amendment approvals. With respect to applications for a CoC for a new cask design, the NRC would publish in the **Federal Register** a notice of receipt and availability of the application. The NRC would then prepare a draft CoC and a draft Safety Evaluation Report (SER) and would notice the availability of these documents in the **Federal Register** for a 60-day comment period. The NRC would evaluate the public comments and publish a response in the **Federal Register**, together with an order granting the CoC.

Amendments to CoCs would be processed in the same manner as new CoCs except with respect to amendments where the applicant asserted that the amendment ''did not have the potential to have a significant impact on public health and safety.'' As part of the regulatory changes proposed in the petition, the NRC would amend § 72.238 to include criteria for determining whether this ''no significant impact'' standard is met in any given case. If the NRC staff agreed with the assertion of no significant impact considerations, a notice of availability of the order granting the amendment and the associated SER would be published in the **Federal Register**. A post-effectiveness comment period on the amendment and the no significant impact considerations determination would be provided. If the NRC staff determined that the amendment posed a potential significant impact, the draft CoC and SER would be published in the **Federal Register** for a 60-day comment period and the amendment would not become effective until the NRC had published a response to the comments and an order granting the amendment. The petitioner submitted examples of amendments likely to involve, and not involve, significant impact considerations that it proposed for inclusion in a regulatory guidance document. Thus, the main focus of the NEI petition is to abbreviate the CoC amendment approval process by allowing amendments which do not involve significant impact considerations to become effective upon completion of the NRC staff's safety review and prior to the receipt of any public comments.

In NEI's view, NRC's existing process for issuing and amending CoCs takes too long to complete. NEI believes that the length of the process may create a substantial impediment to the increased future deployment of dry spent fuel storage by reactor licensees and/or to

the reactor decommissioning process. In particular, the petitioner believes that NRC is in need of a regulatory process capable of dealing with a potentially large number of amendments on a more timely basis. The petitioner states that, as of the date of the petition, the rulemaking process to amend cask CoCs has taken about 24 months to complete. Use of notice and comment rulemaking procedures, as the petitioner sees it, unnecessarily expends resources on what petitioner views as a ministerial task—maintaining a list of certified casks. Replacing the present process with a simplified, streamlined procedure will have the additional benefit, NEI believes, of making the process for approving spent fuel storage casks similar to the process for approving spent fuel transportation casks.

The petitioner believes that its suggested alternative process is consistent with legal requirements. NEI takes the position that the notice and comment rulemaking used by the NRC to issue CoCs and CoC amendments is a discretionary choice of the Commission which may have been appropriate when the scope of safety issues associated with the issuance and amendment of CoCs was unknown, but is no longer necessary following more than a decade of experience with these rulemakings. Nor is a license proceeding of any kind needed for the approval of a CoC or CoC amendment, in the petitioner's view, because ''a CoC has been recognized legally as something less than a license.'' The petitioner bases this position on the court's statement in *Kelley* v. *Selin,* 42 F.3d 1501, 1518 (6th Cir. 1995), *cert. denied,* 515 U.S. 1159 (1995), that ''certification of designs is not identical to the grant of a general license. Certification is a narrower procedure that approves designs in theory while the grant of a license is a broader form of permission.'' Thus, the petitioner believes that the alternative approval process suggested in the petition would not be subject to Section 189a of the Atomic Energy Act of 1954, as amended (AEA), and would not result in opportunities for adjudicatory hearings. Because there is no legal requirement, in the petitioner's view, to use either rulemakings or adjudicatory hearings for the approval of CoCs or CoC amendments, the petitioner asserts that the NRC is free to adopt whatever approval procedures it believes are adequate for public consideration of the type of safety issues likely to arise in these proceedings.

The petitioner also believes that its proposal meets the NRC's four performance goals:

(1) Maintain safety, protect the environment and the common defense and security; (2) increase public confidence; (3) make NRC activities and decisions more effective, efficient, and realistic; and (4) reduce unnecessary regulatory burden. With respect to the first goal, the petitioner points out that its proposal will have no effect on the substantive safety standards which the CoC applicant must meet nor on NRC's safety and environmental review of an application. Further, orders are as fully enforceable as rules, so there will be no diminution of NRC's enforcement authority. With respect to the public confidence goal, the petitioner believes that public confidence will be maintained because the public will still be able to participate in a meaningful way by providing comments on all new CoCs and all amendments. The only change will be that prior comment on amendments will be appropriately reserved for those CoC amendments that have the potential for a significant safety impact. The goal of making NRC regulatory decisions more efficient will be obtained by elimination of the delay and expenditure of resources involved in notice and comment rulemaking. Finally, the goal of burden reduction will be achieved because the burdensome aspects of rulemaking would be eliminated and amendment requests which do not present significant impacts would be subject to a suitably streamlined review and approval process.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on August 23, 2000. NRC received 24 comment letters from industry, an individual, and a State government agency. All industry commenters supported the petition; the State supported the petition with reservations; and the individual opposed the petition. The NRC reviewed and considered all the comments in developing its decision on this petition.

The commenters supporting the petition did so for the same reasons as those expressed by the petitioner, primarily because the present process involving notice and comment rulemaking takes too long and involves an unnecessary expenditure of resources. One commenter observed that elimination of rulemaking would avoid the need for general licensees to seek exemptions to enable them to use a particular cask design before completion of the rulemaking process. These commenters also supported NEI's proposed alternative process. One commenter cautioned that any change to the current rulemaking process should ensure that the finality and standing of current and future CoCs as adjudicated in *Kelley* v. *Selin* be preserved. The State commenter emphasized that any criteria used to determine the significance of an amendment should be in the rule and not in a separate guidance document. Several commenters encouraged the adoption of standard technical specifications and stated that this would reduce the number of amendment requests.

One commenter opposed the petition. This commenter expressed concern that the effect of the alternative proposal would be to reduce public input and that many documents would no longer be publicly available. The commenter felt that any burden imposed by the present process was basically the fault of the industry; that if the vendors ''did their homework'' and got the proposed cask design complete before submitting it to the NRC, amendments would not be necessary. The commenter stated that the cask designs were supposed to be generic to avoid the need for site-specific approvals, yet amendments are regularly needed to accommodate minor differences in cask content unique to particular plants. The commenter objected to NRC being able to decide, prior to any public notice, whether an amendment has any significant impact or not, noting that this deprives the agency of any public insight on health and safety issues before the amendment becomes immediately effective. This commenter also believes that the present rulemaking process is not a matter of agency discretion but rather is imposed by Section 133 of the Nuclear Waste Policy Act of 1982.

Reasons for Denial

The Commission is denying the petition for rulemaking because (1) improvements in the approval process have already significantly decreased the length of time for approval of CoC amendments, making regulatory change unnecessary; (2) the petitioner's approval process may require the offer of an opportunity for a hearing, which could eliminate any efficiency obtained by generic consideration of cask design issues; and (3) the Commission's performance goals would be better served by retaining the present process than by adopting the process suggested by petitioner.

1. The length of the rulemaking process for CoC amendments has been significantly shortened since submission of the petition, obviating any need for a regulatory change.

The petitioner's primary reason for requesting an amendment of Part 72 to delete the use of notice and comment rulemaking for initial and amended CoCs is the assertion that this process is too lengthy and may interfere with efficient, expeditious use of dry cask storage. The petitioner's proposed process for approving initial cask designs—which includes public notice of the availability of the draft SER and environmental assessment (EA) for a 60-day comment period, and effectiveness of the CoC only after NRC has responded to any comments—is little different from the present process and would not produce any significant time savings. Under the petitioner's proposed process for amending CoCs, however, when the NRC agreed with an applicant's proposed finding of no significant impact, the amendment would become effective upon completion of the NRC staff's safety evaluation of the amendment. This would eliminate the time needed for the current CoC amendment rulemaking process.

At the time the petitioner submitted its petition, the petitioner stated that the rulemaking process to amend cask CoCs took about 24 months to complete. The Commission agrees that this is an excessive amount of time for very simple amendment rulemaking. However, the Commission now uses the direct final rule process for CoC amendments. In this process, the rule automatically becomes effective 75 days after its publication in the **Federal Register** unless a significant adverse comment is received within 30 days of publication. If such a comment is received, it is treated as a comment on a companion proposed rule published at the same time as the direct final rule. The NRC withdraws the direct final rule and subsequently issues a final rule responding to the comment. The NRC has now published 9 direct final rules for CoC amendments, only one of which has been withdrawn. NRC's current experience is that the rulemaking process for CoC amendments takes between 4 and 6 months rather than the 24 months which is the premise of the petition. We do not believe the current amount of time devoted to CoC amendments is inordinate given the advantages, discussed below, of using the present process.

2. Although NRC agrees with petitioner that the use of rulemaking to approve cask designs is discretionary, we are not convinced that, in the absence of rulemaking, NRC should approve CoCs for casks without an opportunity for an adjudicatory hearing.

The petitioner's suggested alternative process for the approval of cask designs and their amendment rests on two legal assumptions: (1) That the Commission has the discretion to eliminate rulemaking from the approval process; and (2) that if the Commission does eliminate rulemaking from this process it will not be necessary to provide an adjudicatory hearing in its place. As explained below, the Commission agrees with the first assumption but has reservations about the second.

In 1990, the Commission amended Part 72 to provide, in new Subpart K, a general license to enable Part 50 reactor licensees to store spent fuel in an on-site independent spent fuel storage installation (ISFSI) without the need for a site-specific NRC approval, provided storage is in casks approved by the NRC and that certain other conditions are met. (55 FR 29181; July 18, 1990.) The same rulemaking added subpart L, in which the Commission established a cask approval program. Under this regulatory regime, a CoC is issued on a finding that the applicant has satisfied NRC requirements (10 CFR 72.236; 72.238), but before the certified cask design can be used under the general license, the cask design must be added to the list of approved designs in 10 CFR 72.214 via a rulemaking.

This regulatory scheme was intended to implement two statutory provisions of the Nuclear Waste Policy Act of 1982, Sections 218(a) and 133. Section 218(a), in part, provides:

> The Secretary [of Energy] 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 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, in part, provides:

> The 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.

In its 1990 rulemaking, the Commission stated that the storage technology it was approving was storage of spent fuel in dry casks (55 FR 29182; July 18, 1990). Thus, the Commission saw its statutory duty under Section 218(a) as being fulfilled by its approval of a particular class of dry storage technology rather than by its approval of particular cask designs which were all of the same class. The Commission's statutory duty under Section 133 was fulfilled by the process it established to provide for the use of the approved technology under a general license.

The NRC agrees with petitioner that the Commission's choice to use rulemaking to list approved cask designs was a discretionary choice not mandated by statute. What must be kept in mind, however, is the process that the regulatory scheme, adopted in 1990, replaced. Before cask designs were approved by generic rulemaking for use by a general licensee, the only process available to approve the ISFSI and the cask design was the site-specific licensing proceeding, which included the opportunity for a hearing. In these site-specific proceedings, NRC approval was granted only to one licensee to use a particular cask design. If other licensees wanted to use the same design, a separate approval was needed and a separate opportunity for a hearing was provided.[1] Thus, the regulatory regime put in place in 1990 was designed to encourage and to expedite the use of dry cask storage technology because it meant that a cask design would only need to be approved once, and then it would be available to any general licensee who wished to use it and who could meet the conditions of the CoC without the need for any further site-specific approval. The new cask approval process was more efficient than the one it replaced, but its success depended upon the approval and manufacture of cask designs which could be used by a large number of reactor licensees. Instead, cask vendors have optimized cask designs for particular licensees, resulting in a need for amendment of the designs to make them more widely usable. Even with the additional time needed to amend cask designs, we believe the current process is more efficient and less time-consuming than the one it replaced.

The second assumption on which the petition is based is the expectation that it would not be necessary to provide an opportunity for an adjudicatory hearing in the proposed alternative approval process. Section 189a(1)(A) of the AEA provides, in relevant part:

> In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit * * * and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees * * * the Commission shall grant a hearing upon the

[1] Licensees may still apply for a site-specific license. If they choose to do so and reference a certified cask, issues associated with cask designs are not subject to litigation. *See* ''Clarification and Addition of Flexibility Final Rule,'' (65 FR 50606; August 21, 2000). Elimination of rulemaking from the CoC process would undermine the rationale for the Clarification rulemaking.

request of any person whose interest may be affected by the proceeding, and shall admit such person as a party to such proceeding * * *.

In *Kelley* v. *Selin*, the United States Court of Appeals for the Sixth Circuit considered a claim that the NRC had violated Section 189a by denying the petitioners' request for an adjudicatory hearing to consider issues regarding the storage of nuclear waste in VSC–24 casks at the Palisades nuclear plant. These petitioners asserted that NRC's use of generic rulemaking to add the VSC–24 cask design to the list of approved designs was insufficient because it barred opportunity to dispute issues that were site-specific in relation to the use of the VSC–24 cask at Palisades. The court upheld NRC's choice to use rulemaking to resolve *all* issues concerning the VSC–24 cask design. The court noted that ''even where an agency's enabling statute expressly requires it to hold a hearing, the agency may rely on its rulemaking authority to determine issues that do not require case-by-case consideration.'' 42 F.3d at 1511 (quotations and citations omitted). This was the case here because, *inter alia*:

> The NRC's certificate of compliance for the VSC–24 casks, like the certificates of compliance for the other dry storage technologies listed in 10 C.F.R. 72.214, contains a lengthy list of conditions of system use for operation of the VSC–24. * * * This extensive list of conditions for use of the VSC–24 cask will virtually eliminate the need for site-specific consideration concerning the use of the VSC–24 cask, since the various licensees of civilian nuclear power generating facilities will be able to determine from the conditions of system use for the VSC–24 cask whether it is possible to use the cask at the site of their nuclear power generating facility.

42.Fed at 1513. Thus the court refused to use its power of judicial review to ''dictate to the agency the procedure which it must use in approving designs for containers for the dry storage of spent nuclear fuel.'' *Id. See also Siegel* v. *Atomic Energy Commission*, 400 F.2d 778, 785–786 (D.C. Cir. 1968).

At present, any obligation the NRC may have under Section 189a of the AEA to provide an opportunity for a hearing on a cask approval is satisfied by the rulemaking procedures it employs for these approvals. In the absence of these rulemaking procedures, the Commission's obligations under Section 189a would need to be revisited. As the petitioner points out, the court in *Kelley* v. *Selin*, in dicta, did characterize certification of designs as being a narrower form of permission than the grant of a license (42 F.3d at 1518), and this could conceivably support an argument that Section 189a does not apply to NRC's approval of CoCs or CoC amendments. However, whether Section 189a requires a hearing opportunity on a cask certification in the absence of rulemaking was not at issue before the court and was not decided by the court. Thus, there has been no judicial determination of this issue. The Commission concludes that there is a significant risk that the procedures offered by the petitioner, which fall short of the ingredients of a normal rulemaking,[2] would be seen as deficient.

Similarly, the court did not address, even in dicta, whether the Part 72 Subpart K general licensing scheme for ISFSIs that relies on the CoC process being accomplished by rulemaking, would be acceptable in the absence of either a rulemaking or a § 189a hearing on the CoC. Nor did the court address the specific licensing schemes for ISFSIs that also relies on the CoC rulemaking proceedings to eliminate repetitious review of cask design issues that are resolved by CoC rulemakings. *See* 10 C.F.R. 72.46(e). Consequently, if the CoC process were streamlined as NEI suggests and conducted without a rulemaking or offering a § 189a hearing, the Commission may be required to resolve cask design issues on a case-by-case basis in proceedings for specific ISFSI licenses or license amendments.

3. NRC's performance goals would be better served by retention of the present process than by adoption of petitioner's suggested process.

The Commission examined the petitioner's suggested alternative proposal in the context of NRC's four performance goals and in comparison with NRC's existing cask approval process. With respect to the first goal—maintaining safety and protecting the environment and the common defense and security—there is no difference between the two processes. The petitioner has not suggested any change in NRC's safety review of applications for CoCs or CoC amendments nor for NRC's inspection and enforcement activities.

With respect to the second goal—increasing public confidence—we think that the present process is more likely to obtain this objective. The petitioner notes that its alternative process provides the public with essentially the same opportunities for public comment; the only difference being that for amendments for which a no significant impact considerations is demonstrated, the comment period will be after, rather than prior to, the effectiveness of the amendment. However, this difference, could generate new public objections to being denied an opportunity to comment before the NRC's decision and, in particular, before to NRC's no significant impacts decision.[3] Both the public commenter who opposed the petition and the State commenter questioned petitioner's characterization of some potential amendments as being non-significant. Under the petitioner's suggested scheme, NRC would publish a notice in the **Federal Register** that would both announce its determination that the amendment had no potential for significant impacts and its immediately effective decision approving the amendment. Although, under the petitioner's scheme, the public would have a post-effectiveness opportunity to comment on both the amendment and the no significant impact considerations determination, the public may not regard this as a meaningful opportunity to comment. Under the present process, publication of an amendment as a direct final rule gives the Commission an opportunity to test its judgment that the amendment is non-controversial and will not attract any significant adverse comments. If a significant adverse comment is received, the rule is withdrawn *before it becomes effective* and the Commission proceeds with normal notice and comment rulemaking. We think this process is more likely to achieve the goal of increasing public confidence in the Commission's decisionmaking process.

With respect to the third goal of making NRC decisions more effective, efficient, and realistic, the only advantage of petitioner's alternative process over the present process would be a shortening of the time between the completion of the NRC staff's safety review of CoC amendments which meet the no significant impact considerations test and the effectiveness of the amendment. But, as described *supra,* this time interval—which petitioner asserted to be 24 months—has already been significantly shortened to 4 to 6 months through use of direct final rules and other measures taken to expedite the process, such as elimination of the

[2] For example, under § 553(d) of the Administrative Procedures Act, notice of a final rule must be given at least 30 days prior to its effective date. The petitioner contemplates that an order would be effective immediately.

[3] Petitioner's suggested process is similar to the process the Commission uses for considering Part 50 license amendments. In that process, the applicant submits a no significant hazards consideration analysis and the Commission publishes in the **Federal Register** a proposed determination that no significant hazards consideration is involved and allows a 30-day comment period on this determination. Normally, the amendment is not granted until the conclusion of this comment period. See 10 CFR 50.91(a).

need for a rulemaking plan and issuance of the rule by the Executive Director for Operations. Moreover, the NRC staff continues to find ways to expedite the internal approval process as additional experience is gained. Under the alternative process suggested by the petitioner, the staff's technical review would take longer than it currently takes because the staff would be required to conduct some activities currently conducted under rulemaking and some new activities that they do not perform under the current process. An environmental assessment would need to be prepared for each new CoC and each CoC amendment (this is currently performed during rulemaking). As part of this process, the staff would need to consult with the states. If appropriate, a Finding of No Significant Impact (associated with the environmental review) would need to be prepared and published in the **Federal Register**. The NRC staff would need to prepare, and have published in the **Federal Register**, the no significant impact consideration finding (a new action). In addition, an order granting the CoC (new action) would need to be prepared and issued. These activities would increase the staff effort and review time necessary for approval of a CoC amendment. Moreover, whatever time savings petitioner's process might achieve would be offset if it should prove necessary to resolve cask design issues on a case-by-case basis in ISFSI proceedings. Unquestionably, a case-by-case consideration, rather than a generic review, would significantly increase the time and resources necessary for finally resolving cask design issues. Any uncertainty in the finality of the NRC's decision on cask design issues could postpone the loading of casks, because one outcome of any case-by-case consideration could be to overturn the NRC decision to approve a cask.

Finally, with respect to the fourth goal of reducing unnecessary regulatory burden, the petitioner asserts that its alternative process achieves this goal because ''the new process removes the burdensome aspects of rulemaking which are unnecessary because they do not add to the quality of the regulatory decision'' and ''the new process identifies the CoC amendment requests which do not present significant potential impacts and subjects those amendment requests to a suitably streamlined review and approval process.'' The NRC notes that the petitioner's suggested process for considering initial CoCs and amendments which do involve significant impacts—a process that involves a 60-day comment period and no final NRC action until NRC has addressed the comments—is not significantly different from the present process and would not provide significant burden reduction for either the NRC staff or the industry. There could be a slight increase in burden for the staff because petitioner's process calls for publication in the **Federal Register** of a Notice of Receipt and Availability of the Application, a step not part of the current process. The petitioner's process for CoC amendments would require the applicant to submit a no significant impacts determination consideration along with the application. This would actually place an additional burden on the applicant and on the NRC staff assigned to reviewing the determination even though the extra burden might produce the benefit of an immediately effective amendment. Staff effort would also continue to be expended on preparation of an environmental assessment and the necessary **Federal Register** notices (currently part of the rulemaking process). The staff would also have the added burden of preparing an order to issue the CoC amendment. In short, there would be little, if any, burden reduction stemming from petitioner's alternative process. Moreover, if it should prove necessary to offer an opportunity for a hearing, a hearing request would also result in an increased expenditure of resources by both staff and the industry.

In conclusion, for the reasons explained above, we believe that NRC's performance goals are better served by retention of the current process.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 5th day of December, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–30611 Filed 12–10–01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–028–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma proposes revisions to its rules concerning employment and financial interests of state employees and members of advisory boards and commissions, and remining and reclamation of previously mined and certain inadequately reclaimed lands. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations. Oklahoma also intends to correct some cross references and typographical and grammatical errors.

This document gives the times and locations that the Oklahoma program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.s.t., January 10, 2002 . If requested, we will hold a public hearing on the amendment on January 7, 2002. We will accept requests to speak at the hearing until 4:00 p.m., c.s.t. on December 26, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Oklahoma program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa

Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Description of the Proposed Amendment

By letter dated November 1, 2001 (Administrative Record No. OK–993), Oklahoma sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Oklahoma sent the amendment at its own initiative. Oklahoma proposes to amend the Oklahoma Administrative Code (OAC), Title 460, Chapter 20. Below is a summary of the changes proposed by Oklahoma. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES.**

A. Subchapter 3. Permanent Regulatory Program

OAC 460:20–3–5. Definitions

Oklahoma proposes to add definitions for ''Lands eligible for remining'' and ''Unanticipated event or condition.''

B. Subchapter 5. Financial Interests of State Employees

1. OAC 460:20–5–1. Purpose

In this section, Oklahoma proposes to add persons who are prohibited from having any direct or indirect financial interest in any underground or surface coal mining operation. These additional persons are (1) members of advisory boards, (2) the Oklahoma Mining Commission, and (3) commissions representing multiple interests.

2. OAC 460:20–5–2. Objectives

Currently, the state's regulations prohibit employees of the Department of Mines who perform any function or duty under the Oklahoma Coal Reclamation Act of 1979 from having any direct or indirect financial interest in any underground or surface coal mining operation. Oklahoma proposes to expand the list of persons who perform any function or duty under the Oklahoma Coal Reclamation Act of 1979 and who are prohibited from these financial interests to include (1) members of advisory boards, (2) the Oklahoma Mining Commission, and (3) commissions representing multiple interests.

3. OAC 460:20–5–3. Authority

Oklahoma proposes to remove the authority of the Director of the Department of Mines to ''file all statements and supplements received pursuant to 45 O.S. Supp., Section 765 from members of advisory boards and the Oklahoma Mining Commission with the Oklahoma Governor's Office, Director of Appointment.''

4. OAC 460:20–5–4. Responsibility

a. In paragraph (a), Oklahoma proposes to require the Financial Officer of the state Department of Mines to furnish a blank employment and financial interest statement to each state employee, and members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests who are required to file a statement. The blank statement must be provided 45 days in advance of the filing date established by Section 460:20–5–8(a). In addition, the Financial Officer must provide annually to all state employees (required to file the statement) the name, address, and telephone number of the person whom they may contact for advice and counseling.

b. Oklahoma proposes to add a new paragraph (b) that sets forth the duties of the Director of Appointments of the Oklahoma Governor's Office.

c. Oklahoma proposes to revise paragraph (c) to read as follows:

(c) Department of Mines employees, members of advisory boards, the Oklahoma Mining Commission, or commissions representing multiple interests performing any duties or functions under the Act shall:

(1) Have no direct or indirect financial interests in coal mining operations;

(2) File a fully completed statement of employment and financial interest 120 days after this Chapter becomes effective or upon entrance of duty, and annually thereafter on specified filing dates; and

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial actions.

5. OAC 460:20–5–7. Who Shall File

In paragraph (a), Oklahoma proposes to require any employee, and members of the Oklahoma Mining Commission, advisory boards, and commissions representing multiple interests who perform any function or duty under the Oklahoma Coal Reclamation Act of 1979 to file a statement of employment and financial interests.

6. OAC 460:20–5–8. When To File

a. In paragraph (a), Oklahoma proposes to add that members of the Oklahoma Mining Commission who perform functions or duties under the Oklahoma Coal Reclamation Act of 1979 must file employment and financial interest statements.

b. In paragraph (b), Oklahoma proposes to add that new appointments to advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests who are hired, appointed, or transferred to perform functions or duties under the Oklahoma Coal Reclamation Act of 1979 will be required to file employment and financial interest statements at the time of entrance to duty.

c. In paragraph (c), Oklahoma proposes to add that new appointments to advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests are not required to file annual employment and financial interest statements on the subsequent annual filing date if this date occurs within two months after their initial statement was filed.

7. OAC 460:20–5–9. Where To File

In paragraph (b), Oklahoma proposes to add that members of the Oklahoma Mining Commission must file employment and financial interest statements with the Governor's Office, Office of Appointments.

8. OAC 460:20–5–10. What To Report

a. In paragraph (a), Oklahoma proposes to add that advisory board members and commissioners must report all information required on the statement of employment and financial interests for themselves, their spouses, minor children, or other relatives who are full-time residents of their homes.

b. Oklahoma proposes to revise paragraph (a)(2) to read as follows:

(2) A certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee, advisory board member or commissioner as part of the certificate; and

c. In paragraphs (b)(1) through (b)(4), Oklahoma proposes to require advisory board members and commissioners, in addition to employees, to provide information regarding any financial interests pertaining to employment, securities, real property, and creditors. d. In paragraph (c), Oklahoma proposes to require advisory board members and commissioners, in addition to employees, to provide a signed certification that (1) none of the financial interests shown on the financial interest statement represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions, and (2) the information shown on the statement is true, correct, and complete. Also, in paragraph (c)(3)(C) regarding exceptions in the financial interest statements, Oklahoma proposes to require advisory board members and commissioners, in addition to employees, to provide any other information which they believe should be considered in determining whether or not an interest represents a prohibited interest.

9. OAC 460:20–5–13. Appeals Procedures

Oklahoma proposes to designate the existing paragraph as paragraph (a) and to add new paragraph (b) to read as follows:

(b) Members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests should follow any appeals process provided for by the Oklahoma Governor's Office, Director of Appointments.

C. Subchapter 15. Requirements for Permit and Permit Processing

1. OAC 460:20–15–4. Regulatory Coordination With Requirements Under Other Laws

Oklahoma proposes to add a provision that each regulatory program must provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of, among other things, all state, federal, and local permitting and licensing requirements.

2. OAC 460:20–15–6. Review of Permit Applications

a. Oklahoma proposes to add new paragraphs (b)(4) and (b)(5) to read as follows:

(4) Subsequent to October 24, 1992, the prohibitions of paragraph (b) of this Section regarding the issuance of a new permit shall not apply to any violation that:

(A) Occurs after that date;

(B) Is unabated and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:

(i) Issued before September 30, 2004, or any renewals thereof; and

(ii) Held by the person making application for the new permit;

(5) For permits issued under Section 460:20–33–12 of this Chapter, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it:

(A) Arose after permit issuance;

(B) Was related to prior mining; and

(C) Was not identified in the permit.

b. Oklahoma proposes to add new paragraph (c)(13) to read as follows:

(13) For permits to be issued under Section 460:20–33–12 of this Chapter, the permit application must contain:

(A) Lands eligible for remining;

(B) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(C) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

D. Subchapter 33. Requirements for Permits for Special Categories of Mining

OAC 460:20–33–12. Lands Eligible for Remining

Oklahoma proposes to add this new section to its regulations. It contains the permitting requirements for conducting coal mining operations on lands eligible for remining.

E. Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards

OAC 460:20–43–46. Revegetation: Standards for Success

1. Oklahoma proposes to revise paragraphs (b)(6) to read as follows:

(6) For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. In general this is considered to be at least 70% vegetative ground cover of approved vegetation species.

2. Oklahoma proposes to revise paragraphs (c)(2) through (c)(3) to read as follows:

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Five full years, except as provided in paragraph (c)(2)(B) of this Section. The vegetation parameters identified in Subsection (b) of this Section for grazingland or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in Subsection (b) of this Section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(B) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by Subsection (b)(6), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Ten full years, except as provided in Subsection (c)(3)(B) below. Vegetation parameters identified in Subsection (b) of this Section shall equal or exceed the approved success standards for at least the last two consecutive years of the responsibility period.

(B) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by Subsection (b)(6), the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

F. Subchapter 45. Permanent Program Performance Standards: Underground Mining Activities

OAC 460:20–45–46. Revegetation: Standards for Success

1. Oklahoma proposes to revise paragraphs (b)(6) to read as follows:

(6) For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to

control erosion. In general this is considered to be at least 70% vegetative ground cover of approved vegetation species.

2. Oklahoma proposes to revise paragraphs (c)(2) through (c)(3) to read as follows:

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Five full years, except as provided in paragraph (c)(2)(B) of this Section. The vegetation parameters identified in Subsection (b) of this Section for grazingland or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in Subsection (b) of this Section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(B) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by Subsection (b), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Ten full years, except as provided in Subsection (c)(3)(B) below. Vegetation parameters identified in Subsection (b) of this Section shall equal or exceed the approved success standards for at least the last two consecutive years of the responsibility period.

(B) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by Subsection (b), the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS NO. OK–028–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on December 26, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each program is drafted and promulgated by a specific state, not OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the

other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a State of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

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

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 16, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01–30578 Filed 12–10–01; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–57–200209; FRL–7116–1]

Potential Clean Air Reclassification and Notice of Potential Eligibility for Attainment Date Extension and Approval of Attainment Demonstration, Georgia: Atlanta Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: On July 17, 2001, the Georgia Environmental Protection Division (GAEPD) submitted to EPA a revised 1-hour ozone attainment demonstration for the Atlanta 1-Hour Ozone Nonattainment area (Atlanta area) that replaces the attainment demonstration submitted to EPA on October 28, 1999. The new submittal contains revised motor vehicle emissions budgets (MVEB), a request for an attainment date extension to November 15, 2004, a revised partnership for a smog free Georgia (PSG) program and the reasonably available control measure (RACM) analysis. GAEPD also commits to perform an early assessment of the Atlanta Ozone Attainment State Implementation Plan (SIP) and submit it to EPA by November 15, 2003.

EPA is proposing to approve the attainment demonstration, including the components listed above, and to grant an attainment date extension, pursuant to EPA's ''Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas.'' The extension policy applies where pollution from upwind areas interferes with the ability of a downwind area to demonstrate attainment with the 1-hour ozone national ambient air quality standard (NAAQS) by the dates prescribed in the Clean Air Act, as amended in 1990 (CAA). As an alternative to reclassification for areas affected by transport, the extension policy provides that an area, such as Atlanta, is eligible for an attainment date extension if it can make submissions that meet certain conditions. EPA is proposing that the Atlanta area meets all of the required conditions.

In the alternative, EPA is proposing to find that the Atlanta area has failed to attain the 1-hour ozone NAAQS by November 15, 1999, the date set forth in the CAA for serious nonattainment areas. If EPA finalizes this finding, the Atlanta area would be reclassified, by operation of law, as a severe nonattainment area. EPA is also taking comment on a proposed schedule for submittal of the SIP revisions required for severe areas should the area be reclassified.

This attainment demonstration relies on the benefits from Georgia's rule ''(bbb) Gasoline Marketing'' as submitted to EPA on August 21, 2001. EPA will be proposing action on this rule, as well as the fuel waiver request, which was submitted to EPA on May 31, 2000, in a separate **Federal Register** action.

DATES: Comments must be received on or before January 25, 2002.

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittals are available at the following addresses for

inspection during normal business hours:

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

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, EPA Region 4, (404) 562–9036 or email: martin.scott@epa.gov.

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I. National Ambient Air Quality Standards

Since the CAA's inception in 1970, EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

II. Ozone National Ambient Air Quality Standards

The 1-hour ozone NAAQS of 0.12 parts per million (ppm) was promulgated in 1979 and areas were designated and classified as attainment/unclassifiable or nonattainment pursuant to the 1990 CAA amendments. It is the designation and classification of the Atlanta area relative to the 1-hour ozone NAAQS that is addressed in this document.

III. Atlanta 1-Hour Ozone Nonattainment Area

The Atlanta 1-hour ozone nonattainment area consists of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale.

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone NAAQS prior to enactment of the 1990 CAA amendments, such as the Atlanta area, was designated nonattainment by operation of law upon enactment of the 1990 amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991). The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any individual ozone monitoring site (i.e., the highest of the fourth highest 1-hour daily maximums in a given three-year period with complete monitoring data). Table 1 in section 181(a) provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 ppm and 0.180 ppm for the three year period 1987–1989 were classified as serious. The Atlanta area design value was 0.162 ppm and thus the area was classified as serious.

Under section 182(c) of the CAA, states containing areas that were classified as serious nonattainment were required to submit SIPs to provide for certain controls, to show progress toward attainment, and to provide for attainment of the ozone NAAQS as expeditiously as practicable but no later than November 15, 1999.

IV. Background on Attainment Demonstration Submissions

The CAA requires serious areas to use a photochemical grid model to demonstrate attainment with the 1-hour ozone NAAQS. EPA's guidance provides that states may also rely on a weight of evidence (WOE) analysis to support attainment if the modeled demonstration does not facially demonstrate that the area will attain by the attainment date.

On October 28, 1999, the GAEPD submitted to EPA a 1-hour ozone attainment demonstration for the Atlanta area that was based on photochemical grid modeling and also provided a WOE analysis to support attainment. In addition, Georgia requested that the Atlanta area attainment date be extended to November 15, 2003. The request for an extension of the attainment date was based on the belief that ozone is transported from upwind areas and affects the ability of the downwind area to attain the 1-hour ozone NAAQS. Thus, emission reductions that were going to be achieved by upwind states under EPA's final NO_X SIP Call rule, published on October 27, 1998 (63 FR 57356), by May 1, 2003, were critical to the State's demonstration that Atlanta would attain the standard by November 2003. The states identified in EPA's final NO_X SIP Call rule as affecting Atlanta are Alabama, Kentucky, North Carolina, South Carolina and Tennessee.

In the October 28, 1999, SIP, as part of the WOE analysis, GAEPD committed to identify and adopt regulations to achieve additional reductions of NO_X and VOC emissions as needed for attainment and to implement these control measures by May 1, 2003.[1] On December 16, 1999, EPA proposed approval of the attainment demonstration and the request for an extension of the attainment date in the **Federal Register** (64 FR 70478), provided that the State would take several actions before final approval: (1) fulfill the commitments to adopt additional VOC and NO_X controls necessary to attain the standard and to perform and to complete an early attainment assessment—i.e., prior to the attainment date—of whether the area will attain; and (2) revise the State's low sulfur fuel rule to address enforcement

[1] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http:/www.epa.gov/ttn/scram/* See file ADDWOE1H.

and waiver issues. EPA received comments on the December 1999 proposal during the comment period. All relevant comments pertaining to the December 1999 proposal, as well as this supplemental proposal, will be addressed in the final action pertaining to the 1-hour ozone attainment demonstration for the Atlanta area. Detailed information on the 2003-based attainment photochemical modeling demonstration, the supplemental WOE analysis and EPA modeling requirements are contained in the Technical Support Document (TSD) for the December 16, 1999 **Federal Register** document. Copies of this TSD can be obtained from the EPA contact listed in the addresses section of this document.

The GAEPD submitted revisions to the attainment demonstration, including the additional adopted emission control regulations identified as part of the WOE analysis as necessary to attain the standard, to EPA on January 31, 2000, and July 31, 2001. EPA proposed approval of the emission control regulations on December 18, 2000 (65 FR 79034), and granted final approval on July 10, 2001 (66 FR 35906).

On July 17, 2001, the State submitted a revised attainment demonstration, which relied upon emission reductions from the State's low sulfur fuel rule—''(bbb) Gasoline Marketing''—and included a commitment to perform an early attainment assessment. As described more fully below, in this action, EPA is proposing to approve the revised attainment demonstration (including a new request to extend the attainment date to 2004) and the commitment to perform an early attainment assessment. EPA will propose action on the revised low sulfur rule and an associated fuel waiver request that was submitted on May 31, 2000, and revised on November 4, 2001, in a separate document. However, because the State is relying on the low sulfur rule and the associated waiver request as part of it's attainment demonstration, EPA cannot take final action approving the attainment demonstration unless and until EPA takes final action approving the low sulfur fuel rule and the associated waiver request.

2004 Attainment Demonstration Background

The photochemical grid ozone modeling performed for the Atlanta 1-hour ozone nonattainment area is based on an emissions projection to 2003, the attainment extension year that the GAEPD requested of EPA in its October 28, 1999, submittal. Under a WOE determination, a state can rely on, and EPA will consider, factors such as other modeled attainment tests, e.g., a rollback analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emissions trends; analyses of monitored air quality data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exclusive list of factors that may be considered and these factors could vary from case to case. The EPA's guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence besides an attainment test is sufficiently compelling to suggest attainment. However, the further a modeled attainment test is from being passed, the more compelling the WOE needs to be.

Detailed information on the 2003 Atlanta attainment photochemical modeling demonstration, the supplemental WOE analysis and EPA modeling requirements are contained in the TSD for the December 16, 1999, proposal (64 FR 70478). The 2003 modeled control strategy simulations indicate that ozone levels in the Atlanta area would be significantly reduced when the state and local controls identified in the October 1999 submission (and subsequently approved by EPA) and NO_X SIP Call plans in upwind states are implemented. Even though the statistical and deterministic modeled attainment tests and the modeling exceedance test used in the photochemical grid modeling assessment for attainment are not satisfied, there were several reasons to believe that Atlanta could reasonably attain the 1-hour ozone NAAQS in 2004 through the development of a WOE analysis for the 2003 demonstration. The WOE submitted as a part of the attainment demonstration for the October 28, 1999, Atlanta SIP includes: (a) an estimate of additional reductions needed for attainment, calculated without the use of additional photochemical grid modeling, (b) estimates of the future design value using EPA's modeling of the NO_X SIP Call; and (c) estimates of the future design value using the Relative Reduction Factor (RRF) analysis. The additional reductions identified by this method, considered along with the results of the Urban Airshed Model (UAM) modeled attainment tests and other weight of evidence presented in the technical analyses for the attainment demonstration, indicate the area would attain the 1-hour ozone NAAQS by November 2003. This analysis strengthens the WOE and accounts for high modeled peaks by estimating the additional measures that at a minimum bring the model estimated future ozone design value to 124 parts per billion (ppb) or below. An air quality and emissions trends analysis is also reviewed as a part of the WOE analysis in attainment demonstrations for other urban areas. Though not submitted as part of Georgia's WOE, EPA considered that air quality in Georgia has improved since the 1980s. The average design value of 162 ppb in the 1980s had decreased to an average design value of 148 ppb in the 1990s. This improvement in air quality has occurred despite growth. The reductions associated with VOC and NO_X reductions implemented in 1999 appear to be beneficial.

V. Evaluation of the 2004 Attainment Demonstration

Subsequent to the State's October 1999 submission and EPA's December 1999 proposed approval of the Atlanta attainment demonstration, the source compliance date under the NO_X SIP Call rule was extended from May 1, 2003 to May 31, 2004. In May 1999, the Court of Appeals for the District of Columbia Circuit stayed the obligation of states to submit SIPs in response to EPA's NO_X SIP Call rule, pending litigation over the rule. In March 2000, the Court issued an opinion largely upholding the SIP Call rule. In later rulings in the summer of 2000, the Court lifted the stay of the SIP submission obligation, but provided that since SIP submissions were delayed, EPA could not mandate that states require sources to comply with state-adopted rules under the SIP Call earlier than May 31, 2004. Because the source compliance date under the SIP Call was delayed, Georgia determined that it could not attain in the year preceding the source-compliance date under the SIP and submitted a revised SIP requesting an attainment date of November 2004.

The revised attainment demonstration submitted by the State on July 17, 2001, relies on the photochemical grid modeling that was submitted in October 1999, but provides additional analysis. The photochemical grid modeling demonstration assumed an attainment year of 2003. The time and resources to redo the modeling for 2004 were not available. Allowing additional time to redo the modeling for 2004 would not be consistent with the CAA intent that areas come into attainment as expeditiously as practicable nor would

it significantly advance the technical basis for the attainment demonstration. Therefore, EPA agreed that attainment for 2004 could be demonstrated with the submittal of a 2004 emissions inventory as a supplement to the 2003 demonstration, provided that the 2004 emissions are less than or equal to the level of emissions used in the modeling. It could then be concluded that if emissions for 2004 were modeled, the predicted concentrations of ozone would be less than or equal to the 2003 1-hour ozone concentrations modeled. If increases in the 2004 emissions were indicated, the supplemental WOE analysis would have to demonstrate why the increase in emissions would not produce an increase in ozone concentrations. Although a 2004 attainment year is being proposed for approval for the Atlanta nonattainment area because of the upwind contribution, the local controls in the attainment strategy will all be implemented no later than May 2003.

The 2004 demonstration is based on the following procedures. First, the State uses information from the photochemical grid modeling and ambient air modeling to assess whether or not additional levels of emission reductions are needed beyond those that were necessary to demonstrate attainment. This assessment was completed using the emissions projections for 2004. The second part of the analysis involves an assessment of the levels of attainment emissions for 2004 and whether or not attainment in 2004 is reasonably likely to occur. A determination was made that if the estimates of the projected 2004 emissions with controls implemented are at or below the 2003 modeled levels then attainment by 2004 is reasonably likely to occur. Both parts of the analysis are described in the following subsections.

Identification of Additional Reductions Needed for Attainment

On December 16, 1999, EPA proposed to approve the 2003 attainment demonstration if the State identified, adopted, and submitted additional controls needed for attainment and revised Georgia's low sulfur fuel rule to address the enforcement and waiver issues in accordance with EPA guidance.

As provided above, the State adopted, and EPA approved, the additional controls identified in the December 1999 proposed approval. In identifying the additional emissions reductions needed to achieve attainment, the State opted to implement controls outside of the nonattainment area, thus requiring a recalculation of the emissions reductions needed. GAEPD used EPA's ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' identified additional controls needed beyond those identified in the 2003 modeling analysis. This analysis involved the use of information from the photochemical grid modeling and ambient air quality monitoring to estimate additional levels of emission reductions needed for attainment of the 1-hour NAAQS for ozone. GAEPD used the analysis to identify the additional percentage reduction in NO_X and VOC from the 1996 emissions base year that are needed for attainment. The method is based on the assumption that the relationship between ozone and its precursors (VOC and NO_X) can be calculated. A detailed discussion of the steps used in the analysis to calculate the additional emission reductions needed for attainment is provided in the TSD which can be obtained from the Regional Office staff contact. GAEPD's application of this analysis estimated that additional reductions of 3.94 percent NO_X and 3.59 percent VOC were needed to attain by 2003. This equates to an additional reduction of 35.75 tons per day (TPD) NO_X and 20.81 TPD VOC. To achieve these reductions the GAEPD adopted and implemented open burning prohibition regulations outside the nonattainment area, additional electric generating units regulations applicable to power plants, and a new combustion rule. An excess of reductions of 5.6 TPD NO_X and 6.0 TPD VOC were available beyond the needed reductions for attainment.

Development of the 2004 Emissions Inventory

The GAEPD developed a 2004 projected emission inventory for the 4-km fine-grid domain from the 2003 modeling inventory and adjusted the projected 2004 emissions inventory with the additional emission reductions identified through the WOE analysis. Mobile source emissions were recalculated using the most recent data available. The emissions from major point sources within the nonattainment area were assumed to have zero growth from 2003 to 2004 because of the Offset Rule, 391–3–1–.03 section (8) (c) 13 that was adopted by the Department of Natural Resources (DNR) Board in September of 1999 and approved by EPA on July 10, 2001. However, this assumption is conservative because the regulation requires an offset ratio (1.2 to 1 for external; 1.3 to 1 for internal) in emissions, so point source emissions in this area should decrease if any new sources are permitted for this area. Also, with the new power plant offset rule in 32 counties, there should be no growth of electric generating unit (EGU) point source NO_X (*i.e.*, >50 TPD in 13 counties, > 100 TPD in 32 counties) emissions. Furthermore, zero growth should have been assumed in projecting the 1999 point source emissions in the nonattainment area to 2003 for the 2003 modeling. Therefore, the 2003 modeling inventory contains approximately 2 to 3 TPD more NO_X emissions in the nonattainment area than it should in Table 2. In the remainder of the fine-grid domain, the Emission Processing System 2 (EPS2) was used to grow point sources outside the 13-County Atlanta nonattainment area to 2004 by applying the appropriate Bureau of Economic (BEA) projection factors to 2003 emission rates for the relevant industry. The emissions from non-road mobile sources were calculated using EPA's version 2000 of the draft NONROAD Model and the 2003 control emissions. The model was used to develop a growth or reduction factor between 2003 and 2004. The calculated factors were multiplied by the 2003 projected controlled emissions for off-road mobile sources to determine the projected 2004 emissions. The TSD contains additional details on the development of the inventory for the 2004 non-road mobile source emissions.

The 2003 on-road mobile source emissions inventory was calculated using 12-speed vehicle categories. However, the metropolitan planning organization, the Atlanta Regional Commission (ARC), develops mobile emissions based on 64 averaged speeds. For consistency, GAEPD and ARC needed to develop a methodology to incorporate the higher-resolution information from ARC as well as the result from the Atlanta speed study without revising the mobile source ozone modeling inventory software. The speed study was conducted to update data (i.e., higher speeds and consider the impact of congestion on speeds) for on-road mobile emissions, based on submitted comments indicating faults in that data. The speed study is located on the GAEPD website at *http://www.dnr.state.ga.us/dnr/environ/plans_files/plans/Speed_Study.pdf.* Data from the Atlanta Nonattainment Area Speed Study were used by ARC to develop a typical summer day 2004 mobile source inventory. The 2003-to-2004 adjustment factors for the ozone episode modeling inventories in the 13-county Atlanta nonattainment area were developed by taking the ratio of the 2004 64-speed inventory to the 2003 12-

speed inventory submitted by GAEPD in the October 28, 1999, attainment SIP. These factors were then applied to 2003 episode-day-specific mobile source modeling inventories to adjust them to 2004 modeling inventories reflecting all of the mobile modeling changes between 2003 and 2004, including the revised speed data and the more disaggregate speed averaging. For the 30 counties within the UAM–IV domain but outside the nonattainment area, an area not covered by ARC's travel demand model, an adjustment factor (the percent difference between the resulting 2004 30-county typical summer day inventory and a 2003 30-county typical summer day mobile inventory) was applied to episode-day-specific 2003 mobile modeling inventories in the 30 attainment area counties to produce 2004 mobile modeling inventories. EPA believes that the projected growth rates, methodologies and emissions reductions from the sources subject to the federal and local measures were calculated correctly.

2004 Attainment Assessment

In the 2004 attainment demonstration submitted in the July 2001 SIP, the State included a projected emissions inventory for the 2004 attainment extension year which accounts for (a) growth between 2003 and 2004; (b) the results of the speed study conducted pursuant to comments on the December 1999 proposal; (c) correction to the PSG voluntary program SIP reductions; (d) removal of NSR and VOC and NO_X RACT for attainment counties within the fine grid domain; and (e) revised estimates to the original ''additional reductions'' identified in the October 28, 1999, SIP. Table 1 provides a comparison between the 2003 projected inventory used for the 2003 modeling demonstration and the 2004 projected attainment inventory in the 4-km fine grid modeling domain. The emissions represent the typical summer day emissions derived from averaging emissions from the three days used in the modeling demonstration as submitted in the July 2001 SIP (i.e., July 31, 1987, August 1, 1987, and July 8, 1988). The levels of anthropogenic NO_X and VOC that were modeled in the 2003 strategy for the Atlanta nonattainment area are 591.6 TPD and 525.8 TPD, respectively. The levels of anthropogenic NO_X and VOC projected for 2004 are 604.5 TPD and 482.1 TPD, respectively. This comparison of emission estimates resulted in an additional reduction of 43.7 TPD VOC and increase of 12.9 TPD NO_X emissions in 2004.

TABLE 1.—COMPARISON OF 2003 MODELED AND 2004 PROJECTED NO_X AND VOC EMISSIONS IN THE MODELING DOMAIN

NO_X (TPD)				VOC (TPD)			
Category	2003	2004	Change	Category	2003	2004	Change
Point	119.4	120.1	0.7	Point	66.7	67.1	0.4
Area	54.9	55.2	0.3	Area	144.7	140.9	−3.8
Non-road	108.9	108.0	−0.9	Non-road	121.5	106.5	−15.0
Mobile	308.4	321.2	12.8	Mobile	192.9	167.6	−25.3
Total	591.6	604.5	12.9	Total	525.8	482.1	−43.7
Biogenics	13.5	13.5		Biogenics	2261.6	2261.6	

2004 Air Quality Assessment for Emissions Changes

A comparison of the 2003 and 2004 modeling inventories indicate that NO_X emissions increase about 2 percent over the modeling domain, while VOC emissions decrease over 8 percent. Since the total NO_X emissions projected for 2004 are more than the levels modeled for 2003, a demonstration was needed to show why this would not adversely affect the ability of the area to attain the 1-hour ozone NAAQS by 2004. We believe that the relationship between VOC emission reductions and ozone concentration reductions and between NO_X emission reductions and ozone concentration reductions can be determined using the photochemical modeling results. Sensitivity analyses from the photochemical modeling in the fine grid were used to develop a relationship to assess the potential for increases in ozone formation for the emission levels projected for 2004. The majority of the local emissions reductions for the attainment strategy occur within the 4-km fine grid with the exception of two power plants near the southern boundary. The sensitivity simulations used were based on the three episode days (*i.e.,* July 31, 1987; August 1, 1987; and July 8, 1988) that were used in the 2003 control strategy simulations. These sensitivity simulations represented modeling scenarios based on reductions across emission inventory categories (e.g., low-level source or elevated sources) while holding all other emissions source categories constant. The air-quality-to-emission-change ratio (i.e., tons per day of emissions change per ppb change in ozone) was developed for each day and sensitivity simulation. The average of these ratios over all days and sensitivities was then determined for each pollutant for each episode day.

The submitted ratios indicate that a 41.5 TPD increase in NO_X is needed to cause a 1.0 ppb increase in ozone or a 164.9 TPD increase in VOC is needed to cause a 1.0 ppb increase in ozone. These relationships were applied to the emissions changes predicted between 2003 and 2004 as presented in Table 1. The tables indicate that NO_X emissions are expected to increase by 12.9 TPD and VOC emissions will decrease by 43.7 TPD in 2004. The NO_X and VOC ratios were applied to the emission changes between 2003 and 2004 to determine how ozone formation would be affected in 2004. This analysis indicated that a 0.3 ppb increase in ozone from the increase in NO_X emissions is offset by the a 0.3 ppb decrease in ozone from the VOC emissions. The identified shortfall gap has thus been met by the State and the necessary control measures approved by EPA. Therefore, the assessment supports the conclusion that the area will attain the NAAQS in 2004.

Reasonably Available Control Measures Analysis (RACM)

Section 172(c)(1) of the CAA requires attainment demonstration SIPs to provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology, RACT) and shall provide for the attainment of the NAAQS. EPA issued a memo dated December 2, 1999, and entitled, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement

and Attainment Demonstration Submissions for Ozone Nonattainment Areas'' stating that states need to provide justification as to why potential RACM have not been adopted. The justification should clearly demonstrate that implementation of feasible measures will not advance the attainment date and will not compensate for any transport contribution such that attainment could be achieved prior to upwind reductions. Evaluations of control measures may be based on technological or economic grounds.

The Georgia RACM analysis must address measures from any anthropogenic source of emissions, i.e., point, area, on-road mobile or non-road mobile. The RACM analysis contains an exhaustive set of control measures, addresses several reasons as to why many of the measures have not been adopted, and contains a demonstration as to why the implementation of remaining potential RACM by the 2003 ozone season would not advance the attainment of the 1-hour ozone NAAQS. Georgia EPD performed a RACM analysis for potential control of NO_X and VOC emission sources not included in the attainment demonstration for the Atlanta 1-hour ozone nonattainment area. Most of the controls identified in the RACM analysis were included in a study completed by Georgia State University (''The Direct Costs of Controlling NO_X and VOC emissions in Atlanta.'' Georgia State University. Atlanta, Georgia: November 1, 1997, pp. 43–65). In the Georgia State Report, the 1990 NO_X and VOC emissions inventory data were updated using growth factors to reflect emissions in 1999. Georgia EPD multiplied the percent reduction expected from a particular control measure from the study by a 2003 base level of emissions in order to calculate 2003 reductions for VOC and NO_X. The 2003 base level was acquired from the 2003 Base Modeling run for the day of July 31. This method was applied to most of the calculations in the RACM analysis. For many of the remaining RACM calculations, GAEPD applied reduction factors from sources such as STAPPA/ALAPCO and EPA to emissions data derived from modeling runs for the Atlanta nonattainment area in order to get projected 2003 VOC and NO_X reductions from a particular control measure. Other reductions were based on similar control measures enacted in other areas and the reduction results obtained in those areas. Georgia EPD performed a RACM analysis to determine if the 2004 attainment date could be advanced. They analyzed the 2003 season to determine if control measures could be implemented that were sufficient to prevent 1-hour ozone NAAQS violations during the 2003 season and thus advance the attainment date.

Each control option was evaluated according to: (1) the State's authority to implement controls; (2) the amount of NO_X reductions; (3) the amount of VOC reductions; (4) whether a similar control measure is already being implemented in the SIP; (5) the cost effectiveness of the control; (6) whether SIP credit has already been taken for the measure; and (7) whether the measure can be implemented to achieve reductions during the 2003 ozone season, (measures implemented after the 2003 ozone season cannot advance the 2004 attainment date). Any measures determined to be feasible to implement after the above described evaluation were grouped, by primary category, under the heading ''remaining measures.'' Georgia used a cut-off of $5,000 per ton in their analysis of whether a measure was cost effective. Georgia has used this threshold for over 12 years in developing their VOC and NO_X RACT regulations. It was, therefore, used in the RACM analysis for consistency. EPA does not consider this cut-off valid for all areas and it may not be valid for Georgia in all areas. However, for the purpose of this RACM demonstration and considering consistency in developing other measures supporting this demonstration, EPA believes this cut-off is acceptable for Atlanta. The RACM analysis indicates that additional reductions of 18.66 TPD NO_X and 51.76 TPD VOC are available for implementation by 2003 in the Atlanta 1-hour ozone nonattainment area. For the RACM analysis, the GAEPD had to demonstrate why these remaining reductions would not advance attainment for a 2003 attainment year prior to the regional NO_X reductions expected from the EPA NO_X SIP Call in 2004. To do this, GAEPD estimated the effect of the NO_X SIP Call and the RACM reductions on ozone concentrations.

The SIP for bringing the Atlanta area into compliance with the 1-hour ozone NAAQS relies upon reductions from the NO_X SIP Call implemented in upwind states. In order to advance the attainment date from November 15, 2004, and thereby be classified as RACM, a control measure or set of control measures would need to provide a greater effect, during the 2003 ozone season, on ozone reduction than the NO_X SIP Call measures will provide in 2004. Appendix C, ''1-Hour Upwind/Downwind Linkages'' of *The Air Quality Modeling Technical Support Document for the NO_X SIP Call,* September 23, 1998, lists Alabama, Kentucky, North Carolina, South Carolina, and Tennessee as significant contributors to Atlanta's ozone exceedances. Table 6 of EPA's Final 2007 Base NO_X emission rates published in the **Federal Register** on March 2, 2000, (65 FR 11222) gives totals for these five states equal to 1,109,255 tons per season or 10,177 tons per day.

Not all of these emissions are transported into Georgia or the Atlanta area. Therefore, any meaningful comparison must be based on the NO_X SIP Call's effect on ozone concentrations in Atlanta. Appendix G of the EPA NO_X SIP TSD referenced above, ''Evaluation of Contributions—Tables of Metrics, 1-Hour CAMX: Upwind States to Downwind States,'' page G–6, gives average contributions to an Atlanta area exceedance as follows: Alabama 8 percent; Kentucky, 1 percent; North Carolina, 1 percent; South Carolina, 1 percent; and Tennessee, 4 percent for a total contribution of 15 percent. The State calculated the effect on a monitored exceedance occurring at 125 ppb, the result being a contribution of 18.6 ppb (125 ppb x 15 percent) from upwind states. The implementation of the NO_X SIP Call in 2004 would reduce the contribution to ozone exceedances in Atlanta by 18.6 ppb.

The effect the ''remaining measures'' would have on air quality if implemented during the 2003 ozone season is calculated by dividing the estimated NO_X or VOC reduction amount times the change in pollutant per change in ozone. Using the factors developed in the air quality assessment to determine the change in ozone concentration from emissions reductions (i.e., 41.45 TPD NO_X per 1 ppb ozone, 164.9 TPD VOC per 1 ppb ozone), the expected change in ozone concentration from the emissions reductions from the remaining measures in the RACM analysis (i.e., 18.66 TPD NO_X, 51.71 TPD VOC) can be estimated. The procedure used to develop the NO_X and VOC factors are discussed in the TSD. Taking the ratio of the factors and the remaining measures reductions would yield 0.45 ppb of ozone decreases from the NO_X reductions and 0.31 ppb of ozone decreases from the VOC reductions. The total ozone reduction due to remaining measures would be 0.75 ppb of ozone. Hence, implementation of the remaining measures in 2003 from the RACM analysis is much less than would be needed to achieve attainment in 2003 without the much larger reductions

from the NO_X SIP Call that will be achieved in 2004. This analysis therefore demonstrates that no additional RACM measures are reasonably available for the Atlanta 1-hour ozone nonattainment area.

Approval of a RACM analysis must be done on a case-by-case basis and the approval for the Atlanta area is not intended to set precedent for any other area requiring a RACM analysis or for any other pollutant.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Atlanta area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, e.g., *http://www.epa.gov/otaq/transp.htm.* In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures-including the kind that GAEPD evaluated in its RACM analysis —that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term-even if such measures do not advance the attainment date-since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

2004 Motor Vehicle Emissions Budgets

The MVEB for 2004 were calculated using the revised speeds, updated registration data, updated vehicle miles traveled (VMT), and projected 2004 VMT, and the control measures identified in the 1-hour ozone attainment demonstration for the Atlanta area. The resulting budgets are 106.25 and 225.12 tons per typical summer day of VOC and NO_X, respectively.

These MVEB reflect the most up-to-date mobile modeling assumptions including 2004 VMT projected from the travel demand model for the Atlanta area and July 2004 emission factors from EPA's MOBILE5b emission factor model and 1999 vehicle registration data, which was the most recent available data at the time of SIP adoption. The control measures identified and modeled for mobile emissions used to establish the MVEB, along with other control measures in this plan, will result in attainment of the 1-hour ozone NAAQS by 2004.

The GAEPD has provided a clearly identified conformity budget for which the Region has initiated the adequacy review process. Comments received during the public comment period are being addressed and the response to these comments will be posted on the agency's internet location at *http://www.epa.gov/otaq/transp/conform/adequacy.htm.* (Memorandum, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' from Gay MacGregor, Director, Regional and State Programs Division, Office of Mobile Sources, issued May 14, 1999, to Regional Air Division Directors.)

EPA is proposing to approve the 2004 MVEB because they are based on the most recent data, they reflect reductions from the control measures included in the attainment demonstration and they are consistent with the overall attainment demonstration. However, a final decision on adequacy will be made on a later date.

Partnership for a Smog Free Georgia

In 1997, EPA published the ''Voluntary Mobile Source Emission Policy'' (VMEP) in order to assist states considering nonregulatory emission strategies, which are generally not effective on a mandatory basis. The VMEP policy allows states to take credit for expected emission reductions from voluntary mobile source programs, and allows states to take credit for up to 3 percent of the total emission reductions needed for attainment through the VMEP policy. Georgia is using this policy to take credit for its PSG program. The PSG promotes effective voluntary actions that employers, their employees and general residents in the region can take to help improve air quality in the metro Atlanta region during the ozone season. Since 1997, EPA and the State have been working to evaluate the PSG program and its corresponding emission reductions. It was agreed that the best way to evaluate the program was to set VMT emission targets based on assumptions which are consistent with the existing emission models and travel demand models used in the region. The program assumes that 20 percent of the PSG program members will use a non-single occupancy vehicle (SOV) method to commute to work. Data collected between 1997 and 2000 indicates that non-PSG partners also change commuter patterns and that about 40 percent of the non-PSG commuters use non-SOV methods to get to work at least one day per week. However, due to programmatic uncertainty, the State reduced this expectation by 75 percent and is assuming 10 percent of all non-PSG program commuters will commute using non-SOV methods. This assumption is consistent with the VMEP policy regarding programmatic uncertainty. The GAEPD has committed to attaining 4.28 tpd of NO_X reductions and 6.51 tpd of VOC reductions by the year 2003 through this program.

The VMEP policy allows the State to take credit for projected emission reductions without the need for preapproved contingency measures should the program fall short of the expected emission reductions. However, the State has committed to meeting the specific emission targets and will make up any emission reduction shortfall through other means. The State has demonstrated that it has sufficient funding to implement an effective program and is committed to annual program evaluation to ensure that target levels are met. In addition, the State is committing to provide annual evaluation reports to EPA each February 1 beginning in 2002. The State will use these evaluations to adjust the PSG program prior to the 2004 attainment date if needed to ensure that target levels are met or the emission reductions are achieved through other means. Additional information can be found in the corresponding TSD. Therefore, EPA is proposing to approve the PSG program, its evaluation procedures, and the expected emission reduction targets as an enforceable part of the SIP.

Commitment to Mid-Course Review

A mid-course review (MCR) is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone

as expeditiously as practicable but no later than the statutory dates.

The EPA believes that a commitment to perform a MCR is a critical element of the WOE analysis for the attainment demonstration on which EPA is proposing to take action today. In order to approve the attainment demonstration SIP for the serious areas requesting an attainment date extension to a year prior to 2005, a review that occurs at a midpoint prior to the attainment date would be impractical in terms of timing. Therefore, for these areas, the State's commitment to an MCR would be a commitment to perform an early attainment assessment to be submitted by the end of the attainment year (e.g., 2003). GAEPD has committed to perform an early attainment assessment of the Atlanta 1-hour ozone attainment demonstration and submit it to EPA by November 15, 2003.

Summary of the 2004 Attainment Demonstration Evaluation

The ozone attainment demonstration for the Atlanta 1-hour ozone SIP, as submitted on July 17, 2001, contains modeling that was developed according to EPA recommended modeling protocols. Based on the results of the modeling plus additional WOE analysis, the supplemental assessment for attainment in 2004, the suite of control measures to be implemented by 2003 and the RACM analysis, EPA is proposing that the State has adequately demonstrated that the Atlanta area will attain the 1-hour ozone NAAQS by the end of the 2004 ozone season. Prior to, or simultaneous with, taking final action on this proposal, EPA will need to take action on the Georgia fuel rule and the associated fuel waiver request.

VI. Attainment Date Extension

EPA's policy regarding an extension of the ozone attainment date for areas affected by transport was set forth in a July 16, 1998, guidance Memorandum entitled ''Extension of Attainment Dates for Downwind Transport Areas'' which was published in a notice of interpretation on March 25, 1999 (64 FR 12221). In it, EPA set forth its interpretation of the CAA regarding the extension of attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour ozone NAAQS, and which are downwind of areas that have interfered with the moderate and serious nonattainment areas's attainment of the ozone NAAQS by dates prescribed in the CAA. EPA stated that it will consider extending the attainment date for an area or a state that:

a. Has been identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date or an upwind area in another state that significantly contributes to downwind ozone nonattainment;

b. Has submitted an approvable attainment demonstration with any necessary, adopted local measures, and with an attainment date that shows it will attain the 1-hour NAAQS no later than the date that the emission reductions are expected from upwind areas in the final NO_X SIP Call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind emission reductions;

c. Has adopted all applicable local measures required under the area's current ozone classification and any additional emission control measures demonstrated to be necessary to achieve timely attainment, assuming the emission reductions occur as required in the upwind areas; and

d. Has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

EPA proposes that the Atlanta area has satisfied the criteria for an attainment date extension as follows.

(i) The State has cited EPA's NO_X SIP Call modeling and analyses documented in EPA's final NO_X SIP Call notice published on October 27, 1998, (63 FR 57356) to demonstrate that the Atlanta area is affected by an upwind area in another state that significantly contributes to ozone nonattainment in the Atlanta area. In our December 16, 1999, notice (64 FR 70478) proposing approval of the initial 1-hour ozone attainment demonstration for the Atlanta area submitted on October 28, 1999, we explained how the Ozone Transport Assessment Group (OTAG) modeling which supported the NO_X SIP Call and the attainment demonstration for the Atlanta area demonstrates the impacts of transport. The NO_X SIP Call notice provides that emissions from sources in Alabama, Kentucky, North Carolina, South Carolina, and Tennessee significantly contribute to violations of the 1-hour ozone standard in the Atlanta area.

(ii) As explained elsewhere in this notice, the GAEPD has submitted an attainment demonstration that EPA believes is approvable. All of the local control measures relied upon in the attainment demonstration have been adopted and submitted to EPA. These measures include all serious area requirements under section 182(c) and the additional controls discussed in the December 16, 1999, proposal (64 FR 70478) and the July 10, 2001, (66 FR 35906) final rule.

(iii) The GAEPD has adopted all local measures required by section 182(c) of the CAA for the Atlanta serious nonattainment area. (See 59 FR 46176, 60 FR 12691, 60 FR 66150, 61 FR 3819, 62 FR 42918, 64 FR 20188). Additionally, see discussion of contingency measures discussed below.

(iv) With respect to implementation of all adopted measures as expeditiously as practicable but no later than the time upwind controls are expected, the Atlanta SIP requires that all local control measures needed for attainment be in place by May 1, 2003, or earlier. The upwind areas identified above are required to implement controls consistent with the NO_X SIP Call by May 31, 2004. All of the local control measures in the Atlanta SIP will, therefore, be implemented prior to that time and EPA also proposes to find that they will be implemented as expeditiously as possible.

EPA proposes, based on the above discussion, that the Atlanta SIP has met the criteria for an attainment date extension. Therefore, EPA is proposing to extend the attainment date for the Atlanta area to November 15, 2004, to allow the reductions in transport to occur before attainment is required. This does not affect the GAEPD's obligation to implement the remaining local measures by the dates required in the approved SIP regulations. Additional background information on EPA's attainment date extension policy can be found in the following **Federal Register** notices:

64 FR 12284	March 18, 1999.
64 FR 18864	April 16, 1999.
64 FR 27734	May 21, 1999.
64 FR 70459	December 16, 1999.
65 FR 20404	April 17, 2000.
66 FR 586	January 3, 2001.
66 FR 634	January 3, 2001.
66 FR 666	January 3, 2001.
66 FR 17647	April 3, 2001.
66 FR 20122	April 19, 2001.
66 FR 26913	May 15, 2001.
66 FR 33996	June 26, 2001.

VII. Proposed Finding of Nonattainment

Table 2 lists the number of exceedances of the 1-hour ozone NAAQS for each monitor in the Atlanta nonattainment area for the period 1997–1999. The ozone design value for each monitor is also listed for the same period. A complete listing of the ozone exceedances for each monitoring site, as

well as EPA's calculations of the design values, can be found in the docket file. For the three year period ending in 1999 (*i.e.,* 1997–1999), the design value for the Atlanta area was 0.156 ppm. For this three year period and each three year period thereafter, the Atlanta area had a design value greater than 124 ppm. Therefore, if EPA does not approve an attainment date extension for Atlanta pursuant to section 181(b)(2)(A) of the CAA, EPA proposes to find that the Atlanta area did not attain the 1-hour NAAQS by the November 15, 1999, statutory attainment deadline.

TABLE 2.—AIR QUALITY MONITORING DATA FOR THE ATLANTA AREA 1997–1999

Site ID	County	Total exceedances 97–99	Annual average expected exceedances	Design value (ppms)
13–089–0002	DeKalb	16	6.7	0.142
13–089–3001	DeKalb	10	4.4	0.135
13–097–0004	Douglas	9	3.5	0.131
13–121–0055	Fulton	28	10.8	0.156
13–135–0002	Gwinnett	7	2.9	0.138
13–223–0003	Paulding	3	1.1	0.124
13–247–0001	Rockdale	28	10.3	0.153

*Only monitors with three complete years of data were used for these calculations.

VIII. Reclassification

Section 181(b)(2)(A) of the CAA requires that, when an area is reclassified for failure to attain, its reclassification be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. Section 181(b)(2)(A)(ii) provides that no area shall be reclassified as Extreme. The Atlanta area is a serious nonattainment area with a design value of 0.156 ppm. Therefore, if EPA finalizes the finding of failure to attain, the Atlanta area would be reclassified, by operation of law, as a severe nonattainment area.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency for submission of the new requirements applicable to an area which has been reclassified. An area reclassified to severe is required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS in section 182(d).

If the Atlanta area is reclassified to severe, EPA must also address the schedule by which Georgia is required to submit SIP revisions meeting the severe area requirements. EPA is proposing to require that the State submit SIP revisions containing all the severe area requirements no later than 12 to 18 months after final action on the reclassification. EPA is soliciting comments pertaining to the time frame for SIP submission. This submission would include a new attainment demonstration and all additional measures required by section 182(d) of the CAA. The additional measures include, but are not limited to, the following: (1) the use of reformulated gasoline in the nonattainment area, (2) the new source review offset requirements would increase from 1.2 to 1 to 1.3 to 1, (3) the definition of a major source would decrease from 50 tons per year to 25 tons per year, and (4) sources in the nonattainment area could be subject to enforcement penalties for failure to attain. Additionally, the attainment date will be as expeditiously as practicable, but no later than 2005.

IX. Contingency Measures

Section 172(c)(9) and 182(c)(a) of the Act require SIPs to contain additional measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date or to meet rate-of-progress (ROP) deadlines. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided guidance interpreting the control measure requirements of 172(c)(1) and 182(c)(a) in the April 16, 1992, General Preamble for Implementation of the CAA (see 57 FR 13498, 13510). In that guidance, EPA indicated that states with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional emissions reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative reviews. The additional 3 percent reduction would ensure that progress toward attainment occurs at a rate similar to that specified under the reasonable further progress requirements for moderate areas (i.e., 3 percent per year), and that the state will achieve these reductions while conducting additional control measure development and implementation as necessary to correct the shortfall in emissions reductions.

EPA has also determined that federal measures can be used to analyze whether the contingency measure requirements of section 179(c)(9) and 182(c)(a) have been met. While these measures are not SIP-approved contingency measures which would apply if an area fails to attain, EPA believes that existing federally enforceable measures can be used to provide the necessary substantive relief. Therefore, federal measures may be used in the analysis, to the extent that the attainment demonstration does not rely on them or take credit for them (*see, e.g.,* 66 FR 586, 615 (January 3, 2001)).

EPA believes the contingency measure requirements of sections 172(c)(9) and 182(c)(9) are independent requirements from the attainment demonstration requirements under sections 172(c)(1) and 182(c)(2)(A) and the ROP requirements under sections 172(c)(2) and 182(c)(2)(B). The contingency measure requirements are to address the event that an area fails to meet a ROP milestone or fails to attain the ozone NAAQS by the attainment date established in the SIP. The contingency measure requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS or the required ROP reductions toward attainment. The attainment or ROP SIP provides a

demonstration that attainment or ROP requirements ought to be fulfilled, but the contingency measure SIP requirements concern what is to happen only if attainment or ROP is not actually achieved. The EPA acknowledges that contingency measures are an independently required SIP revision, but does not believe that submission of contingency measures is necessary before EPA may approve an attainment or ROP SIP. However, EPA believes that areas should have sufficient reductions to meet contingency measure requirements, even if a contingency measure SIP has not been approved, in order to receive an attainment date extension.

EPA has examined the 15 percent ROP and 9 percent ROP plans which were submitted to EPA on June 17, 1996. EPA believes that contingency measure requirements can be met by surplus reductions achieved in the ROP plans. EPA granted approval to the 15 percent ROP in a **Federal Register** published on April 26, 1999, (64 FR 20186). The 9 percent ROP was approved in a **Federal Register** published on March 18, 1999, (64 FR 13348). Detailed information relating to the calculation of Georgia's 1990 adjusted baseline inventory for VOC and NO_X emissions for the Atlanta area can be found in the above referenced **Federal Register** actions. The adjusted baseline inventory for VOC found in Georgia'' 15 percent ROP is 526.19 tpd and the adjusted baseline inventory for NOX found in the 9 percent ROP is 483.12. Therefore, the required 3 percent ROP reductions would be 15.79 tps for VOC ($0.03 \times 526.19 = 15.79$) and 14.50 tpd for NO_X ($0.03 \times 483.12 = 14.5$). In the 15 percent ROP Georgia exceeds the required VOC emissions reduction by 1.06 tpd. This equates to 0.20 percent of the required 3 percent reduction, leaving a balance of 2.80 percent to be made up by NO_X reductions. This must be 2.8 percent of the NO_X adjusted baseline inventory. Therefore, the required NO_X reductions to satisfy contingency requirements for ROP equal 13.53 tpd (0.0280×483.12). The 9 percent ROP achieves an excess NO_X emissions reduction of 19.47 tpd. Thus, the excess emission reductions achieved in the ROP plans meet the 3 percent contingency requirement. EPA is proposing to approve these contingency measures for ROP.

Additionally, EPA examined the attainment demonstration for the Atlanta area submitted on July 17, 2001, for contingency measures. Although no measures have been specifically designated as contingency measures, EPA has found that measures that could reasonably constitute appropriate contingency measures are already contained in the SIP or exist in promulgated federal regulations. These measures include EPA's Tier 2 tailpipe standards, national low emission vehicle program, heavy duty diesel emission standards for 2004. Additionally, the Atlanta area will benefit from fleet turnover, as well as an additional model year of light duty vehicles subject to on-board diagnostic (OBD) testing. These measures will continue to provide reductions after November 2004, the attainment date EPA is proposing to approve for the Atlanta area. The measures are estimated to reduce emissions in the area by 1.45 percent of the 1990 VOC adjusted baseline emissions and 3.31 percent of the 1990 NO_X adjusted baseline emissions by 2005 (the year following the time by which EPA must determine whether the area has attained). More details on EPA's contingency measure analysis are included in the docket for this rulemaking action. While there is not an approved contingency measure that would apply if the Atlanta area failed to attain, EPA believes that existing federally enforceable measures would provide the necessary substantive relief sufficient to provide the basis for proposing approval of an extension to the area's attainment date.

X. Proposed Action

Today, EPA is proposing to approve the 1-hour ozone attainment demonstration for the Atlanta area as submitted on July 17, 2001, the RACM analysis, commitment to perform an early attainment assessment, contingency measures, the 2004 MVEB, PSG program and to extend the attainment date to November 15, 2004. In the alternative, EPA is proposing to find that the Atlanta area failed to attain the 1-hour ozone NAAQS by November 15, 1999. Should EPA not take final action to approve the attainment demonstration and extend the attainment date, EPA is also proposing, in the alternative, to reclassify the Atlanta area to severe. In such case, additional **Federal Register** action will be taken to set the appropriate submittal dates for any additional measures required for severe areas and the attainment date.

XI. Administrative Requirements

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise

satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 30, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–30587 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–47 –2; GA–55–2; GA–58–2–200208; FRL–7116–2]

Approval and Promulgation of Air Quality State Implementation Plans; Georgia: Control of Gasoline Sulfur and Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve a State Implementation Plan (SIP) revision, submitted by the State of Georgia through the Georgia Environmental Protection Division (GAEPD), establishing low-sulfur and low-Reid Vapor Pressure (RVP) requirements for gasoline distributed in the 13-county Atlanta nonattainment area and 32 surrounding attainment counties. Georgia developed these fuel requirements to reduce emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) as part of the State's strategy to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the Atlanta nonattainment area. EPA is approving Georgia's fuel requirements into the SIP because these fuel requirements are in accordance with the requirements of the Clean Air Act (the Act), and are necessary for the Atlanta nonattainment area to achieve the 1-hour ozone NAAQS in a timely manner.

DATES: Comments should be received on or before January 25, 2002.

ADDRESSES: All comments should be addressed to: Lynorae Benjamin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Lynorae Benjamin, (404) 562–9040. Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9040. Ms. Benjamin can also be reached via electronic mail at *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION: The following section provides the rationale for EPA's approval of the Georgia fuel requirements into the SIP, as provided in section 211(c)(4)(C) of the Act. Georgia's fuel requirements are being implemented in two phases. The initial phase requires the low-sulfur/low-RVP gasoline sold in the 13-county Atlanta nonattainment area and 12 surrounding attainment counties during the regulatory control period (June 1 through September 15) each year through 2002. The second phase of the Georgia fuel program expands the low-sulfur/low-RVP requirements to an additional 20 attainment counties. The program becomes a year-round program in 2003, except that the RVP requirement applies only during the June 1 through September 15 control period.

I. Analysis of State's Submittal

What Did the State Submit?

On October 28, 1999, the State of Georgia, through the GAEPD, submitted an attainment demonstration for the 1-hour ozone NAAQS for the Atlanta nonattainment area for inclusion into the Georgia SIP. This submittal included a version of the low-sulfur/low-RVP fuel regulations that has subsequently been amended by the State, and submitted by the State to EPA in revised form in subsequent SIP revisions dated July 31, 2000, and August 21, 2001. The version submitted on August 21, 2001, which is the subject of this proposed rulemaking, is the ''Gasoline Marketing Rule,'' provided in Georgia's Rules for Air Quality Control, Chapter 391–3–1.02(2)(bbb).

On May 31, 2000, in support of its request for SIP approval of the State fuel regulations, GAEPD also submitted a demonstration that, in accordance with section 211(c)(4)(C) of the Act, the fuel control is necessary to achieve a NAAQS. On November 9, 2001, GAEPD submitted an updated ''necessity'' demonstration which reflected the revised motor vehicle emissions budget, the request for an attainment date extension from 2003 to 2004, and the revised Partnership for a Smog Free Georgia emissions calculations.

Does the State Submittal Meet the SIP Approval Requirements Under Section 110?

The SIP submittals, including the rule for Georgia's low-sulfur/low-RVP fuel control program, meet the requirements outlined in section 110 and Part D of Title I of the CAA amendments and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The current version of the fuel rule was formally adopted by the GAEPD Board on June 27, 2001, and became effective July 18, 2001.

How Does the Low-Sulfur/Low-RVP Proposal Relate to Other SIP Activities in the State?

As noted above, on October 28, 1999, GAEPD submitted for EPA approval an ozone attainment demonstration for the Atlanta nonattainment area, which relies upon a number of control measures, including the low-sulfur/low RVP fuel program, to support the demonstration. On December 16, 1999, EPA proposed to approve the October 28, 1999, attainment demonstration for the Atlanta nonattainment area, as well as the underlying rule revisions with the exception of the Georgia fuel rule (the subject of this proposed rulemaking) (see 64 FR 70478). EPA's proposed approval was based on the condition that the GAEPD satisfy certain requirements.

Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000, along with revisions to State rules supporting the attainment demonstrations. Those rule revisions were proposed for approval on December 18, 2000 (see 65 FR 79034). No adverse comments were received pertaining to any rule revisions.

On July 10, 2001, EPA granted final approval to the rule revisions contained

in the December 16, 1999, and December 18, 2000, proposals (see 66 FR 35906). The final rule noted that EPA action for the Atlanta attainment demonstration would be taken in a separate notice.

On July 17, 2001, GAEPD submitted another revised attainment demonstration. The attainment demonstration continues to rely in part on the expected emissions reductions that will be achieved by the low-sulfur/low-RVP fuel control being proposed for SIP approval in this action. Based on the revised Atlanta attainment demonstration, submitted on July 17, 2001, EPA is currently proposing approval for the Atlanta attainment demonstration in a separate notice.

What are the Clean Air Act Requirements?

This approval action is being taken pursuant to section 110 of the Act. The approval of the State's fuel control measure must also meet the requirements of section 211(c)(4)(C). Under this section of the Act, EPA may approve a state fuel control into a SIP if it is found that the control is ''necessary'' to achieve a NAAQS.

EPA's August 21, 1997, Guidance on Use of Opt-in to RFG and Low-RVP Requirements in Ozone SIPs gives further guidance on what EPA is likely to consider in making a finding of necessity. The guidance sets out four issues to be analyzed:

1. The quantity of emission reductions needed to achieve the NAAQS;

2. Other possible control measures and the reductions each would achieve;

3. The explanation for rejecting alternatives as unreasonable or impracticable;

4. A demonstration that reductions are needed even after implementation of reasonable and practicable alternatives, and that the fuel control will provide some or all of the needed reductions.

In this notice of proposed rulemaking and associated Technical Support Document (TSD), EPA addresses these issues.

What Does the State's Low-Sulfur/Low-RVP Regulation Include?

The State's low-sulfur/low-RVP regulation includes two phases of fuel controls that will eventually apply in the 13-county Atlanta nonattainment area and 32 surrounding attainment counties. Described below are the primary features of these phases of control. The first phase of fuel controls apply to the 13-county Atlanta nonattainment area (highlighted in bold) and 12 surrounding attainment counties which include the following: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Haralson, Henry, Jackson, Newton, Paulding, Pickens, Rockdale, Spalding, and Walton. The controls for the first phase of the State's program, effective through 2002, require that all gasoline sold during the control period (June 1 through September 15) in these counties contain a maximum RVP of 7.0 pounds per square inch (psi) and maximum volume-weighted seasonal average sulfur level of 150 parts per million (ppm) (by weight) and, effective April 1, 2001, a maximum per-gallon volume-weighted sulfur level of 500 ppm (by weight). For ethanol blends meeting specified conditions, Georgia's regulations limit RVP to a maximum of 8.0 psi.

The second phase of fuel controls apply to the aforementioned counties and 20 additional attainment counties surrounding the Atlanta nonattainment area. These additional counties include: Banks, Chattooga, Clarke, Floyd, Gordon, Heard, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Oconee, Pike, Polk, Putnam, Troup, and Upson. The fuel controls for the second phase of the State's program are effective April 1, 2003. Under this phase of the State's program, the RVP requirement is maintained and extended to the additional counties but otherwise does not change. The sulfur requirements, however, become more stringent annual averages. The maximum annual average sulfur level allowed in gasoline is reduced to 30 ppm (by weight); the per-gallon limit is reduced to 150 ppm (by weight). Effective June 1, 2004, the seasonal per-gallon sulfur limit is reduced to 80 ppm (by weight) during the June 1 through September 15 control period.

How Will the Program be Enforced?

EPA finds that the fuel rule contains adequate enforcement provisions. GAEPD will enforce the low-sulfur/low-RVP rule. Producers, importers, terminals, pipelines, truckers, rail carriers, and retail dispensing outlets are subject to provisions of this rule. Registration, recordkeeping, reporting, and certification requirements are included. GAEPD will conduct sampling for the fuel program in accordance with the ''Methodology for Randomized Sampling to Estimate Mean Sulfur in Gasoline During a Specified Ozone Season'' (contained in Appendix XXX of the attainment demonstration) or by some EPA-approved modification of this sampling plan. Samples, the number to be determined in coordination with GAEPD and EPA, will be collected and analyzed for RVP and sulfur throughout the control period. Any sample that exceeds the limits specified in the fuel rule will be considered a violation and may require an enforcement action. If an enforcement action is warranted, GAEPD would use one of two approaches. Upon learning of a violation, the GAEPD will issue a notice of violation and negotiate a consent order. If a consent order cannot be negotiated, GAEPD will issue an administrative order. Another provision of the fuel rule provides that the seasonal sulfur average will not exceed 140 ppm when the sulfur limit is 150 ppm. If the seasonal sulfur average exceeds 140 ppm, GAEPD will require 100 percent terminal testing in lieu of testing at the retail level for future control periods. Also, when Georgia's sulfur requirement is reduced to 30 ppm, 30 ppm is the ''trigger'' that will require 100 percent terminal testing in lieu of testing at the retail level for future control periods. Additional commitments related to the enforcement and implementation of the Georgia fuel program are provided in the transmittal letter for the November 9, 2001, fuel control supplemental ''necessity'' demonstration.

Will the Low-Sulfur/Low-RVP Fuel Control Program Provide Needed Emission Reductions?

The State's modeling for this attainment demonstration shows that, even with implementation of all reasonable and practicable measures, including the low-sulfur/low-RVP fuel program, the design value for the nonattainment area will just barely meet the 1-hour ozone standard. Please refer to the accompanying TSD for more information about the photochemical modeling and the weight-of-evidence (WOE) analysis. Once fully implemented, the low-sulfur/low-RVP fuel program will provide 42.93 tons per day (TPD) of NO_X and 24.16 TPD of VOC emission reductions. Thus, the low-sulfur/low-RVP fuel program will provide emissions reductions needed for the Atlanta nonattainment area to achieve the 1-hour ozone NAAQS.

On May 1, 1998, EPA released a staff paper presenting EPA's understanding of the impact of gasoline sulfur on emissions from motor vehicles and exploring what gasoline producers and automobile manufacturers could do to reduce sulfur's impact on emissions. The staff paper noted that gasoline sulfur degrades the effectiveness of

catalytic converters and that high sulfur levels in commercial gasoline could affect the ability of future automobiles—especially those designed for very low emissions—to meet more stringent NO_X and VOC standards that are in use. The paper also pointed out that sulfur control will provide additional NO_X benefits by lowering emissions from the current fleet of vehicles.

Lowering the RVP in gasoline reduces VOC emissions, primarily through reducing evaporative losses from vehicle fuel tanks, lines, and carburetors as well as losses from gasoline storage and transfer facilities. To a lesser degree, lowering RVP can also reduce VOCs in vehicle exhaust.

Reducing these emissions in both the nonattainment area and the surrounding attainment areas will help address the ozone problem in the Atlanta nonattainment area. Specifically, lowering NO_X and VOC emissions through the Atlanta low-sulfur/low-RVP program will benefit the Atlanta nonattainment area by reducing NO_X and VOCs emitted within the 13-county nonattainment area, and by vehicles that originate in the 32-county attainment area and drive into the nonattainment area. Please refer to the TSD for more information on the commuting patterns for the area.

Are There Any Reasonable and Practicable Alternatives to Georgia's Fuel Program?

The State conducted thorough analyses of potential non-fuel control measures available for the Atlanta nonattainment area. The attainment demonstration for the Atlanta nonattainment area contains a detailed discussion of point and other source controls that are required to help achieve attainment of the 1-hour ozone NAAQS in the Atlanta nonattainment area. Many of these control measures were analyzed in a study, ''The Direct Cost of Controlling NO_X and VOC emissions in Atlanta,'' completed by the Georgia State University on November 1, 1997. Following the completion of this study, the State made its own review of possible control measures, including its review of ''reasonably available control measures'' (RACM) as required under the Act. The State's summary of its review of non-fuel control measures is contained in Attachment 3 to the November 9, 2001 ''necessity'' demonstration, which is available in the docket for this rulemaking. The discussion below briefly describes the State's evaluation of the reasonableness and practicability of the non-fuel alternatives that are potentially available after adopting those control measures already included in the revised attainment demonstration. For more detail on the control measures that have already been included in the revised attainment demonstration, and on the State's evaluation of remaining potential alternatives, see the TSD for this rulemaking.

Each potential control option was evaluated according to: (1) The State's authority to implement controls; (2) the amount of NO_X reductions; (3) the amount of VOC reductions; (4) whether a similar control measure is already being implemented; (5) the cost-effectiveness of the controls; (6) whether SIP credit has already been taken for the measure; and (7) whether the measure can be implemented by May 1, 2003 (since measures implemented after this date cannot advance the 2004 attainment date).

GAEPD considered the following source categories for additional VOC and NO_X control measures for the purposes of evaluating the ''necessity'' of the fuel control measure: (for point sources) furniture and fixtures manufacturing facilities, food and kindred products facilities, commercial printing facilities, chemical products facilities, rubber and plastic facilities, paper and allied products facilities, primary metal facilities, fabricated metal products facilities, non-electrical machinery facilities, electrical equipment facilities, petroleum refining facilities, asphalt and coating facilities, air transportation facilities, transportation equipment facilities, stone, clay, and glass products facilities, hydraulic cement facilities, and sewage plants; (for area sources) auto refinishing operations, surface cleaning and preparation operations, solvent degreasing operations, new residential natural gas water heaters, certain commercial and/or industrial watertube and firetube boilers and pesticide application; (for on-road mobile) elimination of vehicle I/M waivers and exemptions, transportation demand management and vehicle usage disincentives; (for nonroad mobile) railroad switcher engines, specific recreational vehicle types and/or pleasure craft, and lawn and garden equipment.

After further analysis of potential controls on each of the above sources, GAEPD concluded that it was not reasonable or practicable to further control these sources. Specifically, for many of the sources listed above GAEPD stated that the time required to implement controls is unpredictable because legislative action authorizing such regulation by GAEPD would be required, or the number of facilities and potential discharge points affected by these control measures would require a tremendous increase in GAEPD resources to implement and ensure compliance.

Based on the State's analysis of the potentially available alternatives, we agree that there are no reasonable or practicable non-fuel control measures available to the State to achieve the 1-hour ozone NAAQS in a timely manner. Individually, none of these controls would supply enough emissions reductions to displace the need for the fuel measure. In order to replace the needed VOC reductions provided by the fuel measure, the State would need to implement nearly all of the potential controls which would require substantial resources and may not be possible in the time allowed, *i.e.,* by 2004. Even if the State did adopt and implement all of the potentially available NO_X control measures, the State would not be able to replace the needed NO_X reductions provided by the fuel measure. Compared to all of the potentially available measures outlined in the TSD, the low-sulfur/low-RVP fuel, which has already been implemented in its first phase, is the most reasonable and practicable measure available to reduce the emissions from ozone precursors for the Atlanta nonattainment area. Low-sulfur/low-RVP fuel is readily available to the State because it is also being provided to the Birmingham, Alabama nonattainment area. The benefits of this fuel program are already being felt in the Atlanta nonattainment area.

Proposed Action by EPA

EPA is proposing to approve Georgia's low-sulfur/low-RVP fuel program into the SIP. The State has demonstrated necessity as required by section 211(c)(4)(C) of the Act. Without the fuel control program in both the nonattainment area and in the surrounding attainment areas, the design values for the nonattainment area will continue to exceed the 1-hour ozone NAAQS. In the Atlanta attainment demonstration, the State examined control measures, not previously implemented, and concluded that, even with adoption of all reasonable and practicable non-fuel control measures, additional VOC and NO_X reductions in the area are necessary to achieve the 1-hour ozone NAAQS. The State further demonstrated that the fuel control satisfies the requirements of section 110 and will supply reductions needed to achieve the ozone NAAQS.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This proposed approval of the Georgia fuel control necessity demonstration does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

Dated: November 30, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–30588 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[VT 022–1225b; FRL–7116–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Sections 111(d)/129 negative declaration submitted by the Vermont Agency of Natural Resources (ANR) on June 5, 2001. This negative declaration adequately certifies that there are no existing commercial and industrial solid waste incineration units (CISWIs) located within the boundaries of the state of Vermont.

DATES: EPA must receive comments in writing by January 10, 2002.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits Program Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following location. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits Program Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov.* While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: Under Section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit control plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

The Vermont ANR submitted the negative declaration to satisfy the requirements of 40 CFR part 60, subpart B. In the Final Rules Section of this **Federal Register**, EPA is approving the Vermont negative declaration as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA does not receive any significant, material, and adverse comments to this action, then the approval will become final without further proceedings. If EPA receives adverse comments, the direct final rule will be withdrawn and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

Dated: December 4, 2001.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 01–30584 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 01–317 and 00–244; FCC 01–329]

RIN 4217

Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, and Definition of Radio Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes changes to local ownership rules and policies concerning multiple ownership of radio broadcasting stations. The Commission examines the effect our current rules has had on the public and seeks comment to better serve our communities. This action is intended to consider possible changes to our current local market radio ownership rules and policies in accordance with the Commissions Telecommunications Act of 1996.

DATES: Comments are due February 11, 2002; Reply comments are due March 11, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joshi Nandan, Office of General Counsel, (202) 418–1755.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Notice of Proposed Rule Making* (''*NPRM*'') in MM Docket No. 01–317, and Docket No. 00–244; FCC 01–329, adopted November 8, 2001, and released November 9, 2001. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C. and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.* This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810–0260, TTY (202) 418–2555, or *mcontee@fcc.gov.* The *NPRM* can be found on the Internet at the Commission's website: *http://www.fcc.gov.*

I. Introduction

1. In accordance with sections 309(a) and 310(d) of the Communications Act of 1934 (''the 1934 Act''), the Commission issues new radio broadcast licenses and approves the assignment and transfer of those licenses only when those actions are consistent with the public interest, convenience, and necessity. Pursuant to its public interest authority, the Commission historically has sought to promote diversity and competition in broadcasting by limiting by rule the number of radio stations a single party could own or acquire in a local market. In section 202(b) of the Telecommunications Act of 1996 (''the 1996 Act''), Congress directed the Commission to revise its local radio ownership rule to relax the numerical station limits in the ownership rules. In the almost six years since the Commission implemented this congressional directive, the local radio market has been significantly transformed as many communities throughout the country have experienced increased consolidation of radio station ownership. In this proceeding, we seek to examine the effect that this consolidation has had on the public and to consider possible changes to our local radio ownership rules and policies to reflect the current radio marketplace.

II. Background

2. To guide our evaluation of the regulatory policies that we should adopt in light of the current radio marketplace, we review the background of the local radio ownership rule and the traditional interests that the rule was intended to advance.

A. Rules and Policies before 1992

3. The Commission first limited local radio ownership in 1938, when it denied an application for a new AM station on the ground that the parties that controlled the applicant also controlled another AM station in the same community. The Commission found that the commonly owned, same service stations would not compete with each other and that granting the application could preclude a competitive station from entering the market. Accordingly, ''to assure a substantial equality of service to all interests in a community'' and ''to assure diversification of service and advancements in quality and effectiveness of service,'' the Commission held that it would allow commonly owned ''duplicate facilities'' only where it would fulfill a community need that otherwise could not be fulfilled. Based on this policy, the Commission found that the ''public convenience, interest or necessity'' would not be served by grant of the application.

4. In the early 1940s, this policy was codified in the Commission's rules. AM licensees were prohibited from owning another AM station that would provide ''primary service'' to a ''substantial portion'' of the ''primary service area'' of a commonly owned AM station, except where the public interest would be served by multiple ownership. FM licensees were prohibited from owning another FM station that served ''substantially the same service area.'' Between 1940 and 1964, the Commission determined on a case-by-case basis whether two commonly owned, same service radio stations served substantially the same area.

5. In 1964, the Commission replaced its case-by-case analysis with a ''fixed standard'' consisting of a contour-based test that looked solely to the overlap of the radio stations' signals. The new rule prohibited common ownership of same service stations when *any* overlap of contours occurred, not just the situation where there was a ''substantial'' overlap. The Commission explained that the purpose of the multiple ownership rules was ''to promote maximum diversification of program and service viewpoints and to prevent undue concentration of economic power contrary to the public interest.'' The Commission found that the local radio ownership rule in particular was based on two principles: first, that ''it is more reasonable to assume that stations owned by different people will compete with each other, for the same audience and advertisers, than stations under the control of a single person or group;'' and second, that ''the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.'' The Commission cited, as support for the local ownership limits, the principle that the First Amendment ''rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.''

6. In the early 1970s, the Commission briefly restricted local radio ownership further by prohibiting, with certain

exceptions, common ownership of different service broadcast stations in the same market. These limits were designed to advance diversity by maximizing the number of independent owners of broadcast media in a market, and the Commission rejected arguments that common ownership of local broadcast stations would enhance the ability of station owners to provide better quality, more responsive programming. The Commission also found that common ownership of local broadcast stations could ''lessen the degree of competition for advertising among the alternative media'' and that common owners could ''use practices [such as special discounts] which exploit [their] advantage over the single station owner.'' On reconsideration, however, the Commission relaxed its new ownership restrictions to allow again, in all circumstances, a party to hold a single AM–FM combination.

7. In 1989, the Commission relaxed certain technical aspects of the contour overlap test, which decreased the likelihood of contour overlap between closely located stations and thereby increased the ability of a single party to own those stations. In making this change, the Commission determined that ownership diversity was not an end in itself, but a means of ''promoting diversity of program sources and viewpoints.'' The Commission determined that its rule change would not adversely affect programming and viewpoint diversity because the number of media outlets had increased since the contour overlap test was developed in 1964 and because the efficiencies that common ownership would generate could lead to programming benefits. The Commission also cited the increase in media outlets and the competition that radio stations faced in the advertising market from television stations, cable systems, and newspapers to support its conclusion that relaxing the contour-based test would not harm competition.

B. The 1992 Radio Ownership Proceeding

8. In a 1992 proceeding, the Commission found that increases in the number and types of media outlets warranted further relaxation of the rule. Citing greater numbers of radio and television stations and the growth of cable, particularly cable radio networks, the Commission determined that relaxing the local radio ownership rule would not harm diversity or competition. Specifically with respect to competition, the Commission found that the radio industry's share of the local advertising market, in which the Commission included television stations and cable systems, had remained flat. The Commission found that the inability of radio stations to realize the efficiencies arising from common ownership harmed diversity and competition by making it more difficult for radio stations to compete and to provide valuable programming services. Accordingly, the Commission decided to relax its ownership rules to permit greater consolidation of radio stations in the local market.

9. The Commission initially adopted a tiered approach, similar to the approach that would be adopted in the 1996 Act. Under the Commission's framework, although common ownership of stations with overlapping signals technically remained prohibited, an exception was created to allow common ownership of a specified number of radio stations based on the number of radio stations in the market. To determine the number of stations that could be commonly owned, radio markets were divided into four tiers, and the maximum number of radio stations that a single party could own was 3 AM and 3 FM stations in the top tier, *i.e.,* markets having 40 or more radio stations. In markets with more than 15 radio stations (the top 3 tiers), the numerical limits were also subject to an audience share cap of 25 percent. Although the Commission recognized that the 25 percent limit was ''substantially more restrictive than ordinary antitrust concerns would mandate,'' the Commission ''decline[d] to base [the] common ownership restrictions solely on economic concentration considerations'' because the restrictions also were ''designed to protect and promote a diversity of voices—a concern distinct from antitrust objectives.'' Both the market size and the audience share were calculated based on the relevant Arbitron market. In adopting this framework, the Commission reserved the right to ''implement a full range of remedies'' where ''ownership levels in a particular market might threaten the public interest.''

10. On reconsideration, the Commission again modified its local radio ownership rule. The rule still generally prohibited common ownership of overlapping stations, but the Commission revised the exception to allow common ownership of up to only 2 AM and 2 FM stations in all markets with 15 or more radio stations. In smaller markets, a single party could own up to 3 stations, of which no more than 2 could be in the same service. The Commission also replaced the audience share cap with a provision that, in markets with 15 or more radio stations, ''evidence that grant of any application will result in a combined audience share exceeding 25 percent will be considered *prima facie* inconsistent with the public interest.'' The Commission explained that this provision was designed to prevent ''excessive concentration'' even if the combination complied with the 2 AM–2 FM limit. The language of the rule indicated that the excessive concentration determination would be made under the public interest standard.

11. The Commission also altered the market definition for calculating the numerical caps; instead of Arbitron markets, the Commission adopted a contour overlap market definition. To determine audience share, the Commission retained use of Arbitron markets, or, if Arbitron data was unavailable, the market created by the counties covered by the contours of the stations to be combined. In certain cases, the Commission permitted applicants to make alternative showings to demonstrate that the proposed combination would not lead to excessive concentration.

C. The 1996 Act

12. In the 1996 Act, Congress directed the Commission to revise its local ownership rule. Specifically, section 202(b)(1) of the 1996 Act, entitled ''Local Radio Diversity—Applicable Caps,'' required the Commission to revise its local radio ownership rule to provide that:

(a) In a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

(b) In a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(c) In a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and

(d) In a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market. The Conference Report provides little additional detail concerning section 202(b), stating merely that ''[n]ew

paragraph *NPRM* 202](b) directs the Commission to further modify its rules with respect to the number of radio stations a party may own, operate or control in a local market.'' In particular, neither the 1996 Act nor the legislative history elaborates on the intended interplay between section 202(b) and the public interest standard contained in sections 309(a) and 310(d) of the 1934 Act.

13. In addition to section 202(b), Congress enacted section 202(h) in the 1996 Act. Section 202(h) directs the Commission to ''review its rules adopted pursuant to this section and all of its ownership rules biennially * * * and [to] determine whether any of such rules are necessary in the public interest as the result of competition.'' Section 202(h) further directs the Commission to ''repeal or modify'' any ownership rules that it finds to be ''no longer in the public interest.'' The legislative history provides little additional discussion concerning the implementation of section 202(h).

D. The Commission's Implementation of Section 202(b) and Subsequent Decisions

14. The Commission responded to Congress's directive in section 202(b) by issuing an order in March, 1996 replacing a portion of the local radio ownership rule, including both the numerical station limits and the presumption that an audience share of greater than 25% was *prima facie* inconsistent with the public interest, with the language set forth in section 202(b). The Commission found that prior notice and an opportunity for public comment were unnecessary because the ''rule changes [did] not involve discretionary action on the part of the Commission, [but] simply implement[ed] provisions of the Telecom Act that direct the Commission to revise its rules according to the specific terms set forth in the legislation.''

15. In 1998, the Commission commenced a biennial review to examine whether the local radio ownership rule was ''necessary in the public interest as a result of competition (NOI, 63 FR 15353, March 31, 1998).'' In its biennial review final report, the Commission concluded that the rule continued to serve the public interest. Although the Commission noted that consolidation had produced financial benefits for the radio broadcast industry, the Commission expressed concern that consolidation could be having an adverse affect on local advertising rates. The Commission also expressed concern that consolidation could reduce diversity of viewpoint and source diversity. Accordingly, the Commission decided to retain the local radio ownership rule without modification.

16. In the 1998 biennial review proceeding, the Commission also decided to examine the method by which it defined the relevant geographic market and counted the number of commonly owned and independent commercial radio stations for purposes of applying the rule. The Commission expressed concern that its current method of defining radio markets might be achieving results that frustrate the Congress' intent and that, together with its method of counting stations in a market for various purposes, might be undermining legitimate expectations of broadcasters, advertisers and the public as to the size of the market and the number of stations in it. The Commission accordingly initiated a rulemaking proceeding in December 2000 to examine possible revisions to its methodology for defining the market and counting the number of commonly owned and independent radio stations.

17. The 1996 revisions to the local radio ownership rule enabled greater consolidation of radio station ownership at the local level, and, since 1996, thousands of assignment and transfer of control applications have been filed to effectuate this consolidation. Although most of these applications were granted summarily, the Commission in certain instances faced concerns regarding the competitive impact of proposed transactions. In response to these concerns, the Commission concluded in a written decision that it had ''an independent obligation [under the statute] to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and[,] thus, would be inconsistent with the public interest.'' In several written decisions since 1996, the Commission engaged in public interest analyses that considered the potential competitive impact of the proposed transaction.

18. In addition to competitive analyses, in August 1998 the Commission began ''flagging'' public notices of radio station transactions that, based on an initial analysis by the staff, proposed a level of local radio concentration that implicated the Commission's public interest concern for maintaining diversity and competition. Under this policy, the Commission flagged proposed transactions that would result in one entity controlling 50% or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70% or more of the advertising revenues in that market. Most of these flagged applications that proposed radio concentration levels that were consistent with Commission precedent were granted on delegated authority. A number of applications that remain pending propose concentration levels that would exceed the levels previously approved in Commission-level decisions.

III. Discussion

19. We propose to undertake a comprehensive examination of our rules and policies concerning local radio ownership. The radio industry has undergone substantial changes since 1996, and we are concerned that our current policies on local radio ownership do not adequately reflect current industry conditions. Our framework for analyzing proposed radio combinations particularly has led to unfortunate delays that do not serve well the interests of the agency, the parties, or the public. Our goal in this proceeding is to develop a new framework that will be more responsive to current marketplace realities while continuing to address our core public interest concerns of promoting diversity and competition.

20. We start with a review of the statutory framework from which we derive our regulatory authority and under which we implement our radio ownership policy. We next consider the traditional goals that have supported the local radio ownership rule—diversity and competition—and possible ways to measure and promote those goals in the modern media environment. After discussion of these subjects, we lay out possible changes to our radio ownership rules and policies. Our goal here is to consider the public interest advantages and disadvantages of various potential rule and policy changes as well as questions surrounding their implementation. In the final substantive section of this *NPRM,* we adopt an interim policy to provide guidance on the processing of radio applications pending completion of this rulemaking.

A. Statutory Framework

21. Before 1996, Commission regulation of local radio ownership was governed primarily by the statutory mandate of sections 309(a) and 310(d) that the Commission regulate the granting and transfer of radio licenses consistent with the public interest, convenience, and necessity. This public interest authority has long been held to authorize regulations, such as the local radio ownership rule, that are designed

to promote the goals of diversity and competition.

22. As a result of the 1996 Act, the broad public interest standards of Title III are no longer the sole congressional statement bearing on the question of local radio ownership. We also must consider the impact of section 202(b) and the rule changes it mandated. In deciding prior cases, the Commission expressed the view that the numerical limits mandated by section 202(b) were important tools for promoting our public interest concerns in local radio markets, but that competitive analyses were appropriate in particular cases where compliance with those limits did not fully address those concerns. Because that view developed out of decisions issued in specific cases, the Commission never received the benefit of public input that a rulemaking proceeding would have afforded. This proceeding will provide us with that opportunity. We propose alternative views on the interplay between section 202(b) and our public interest mandate. We seek comment on these views and invite comment on other possible interpretations of the relevant statutory provisions and the impact any such interpretation would have on our diversity and competition goals if adopted.

23. Commenters should explain the relevance, if any, of section 202(h)'s directive that the Commission review its ownership rules biennially to determine if they are no longer in the public interest as a result of competition. Aside from modifying or eliminating the local radio ownership rule if it is no longer in the public interest as a result of competition, are we permitted to revise or replace the current rule with another framework to address our public interest goals?

24. Commenters also are encouraged to explain how their interpretation of the relevant statutory provisions comports with traditional principles of statutory construction and the specific rule of construction set forth in section 601(c)(1) of the 1996 Act.

25. *Numerical limits are definitive.* One interpretation of the statutory framework is that Congress conclusively determined that the numerical limits specified in section 202(b) establish radio station concentration levels that are consistent with the public interest in diversity and competition.

26. *Numerical limits address diversity only.* Another possible interpretation of the statutory framework is that section 202(b) addresses the diversity prong of our public interest analysis, while leaving competition concerns to be addressed by the general public interest standard.

27. *Numerical limits presumptively consistent with public interest.* A third possible interpretation of the statutory framework is that section 202(b) established presumptively permissible levels of radio station ownership and that, therefore, the Commission should rely on section 202(b)'s numerical limits absent a specific reason to conclude that the rule is ineffective in addressing diversity or competition issues with respect to a particular proposed combination.

B. Promoting Diversity and Competition

28. If we determine that section 202(b) permits us to exercise our public interest authority to promote diversity and competition in radio broadcasting, we seek to explore the contours of these public interest goals, which have been the touchstone of our rules and policies on local radio ownership. We undertake this analysis to guide us as we consider, in accordance with the statutory framework, revisions to those rules and policies to reflect the rapidly changing media marketplace. In that regard, we are especially interested in receiving comments that provide not only the theoretical justifications for adopting a particular regulatory framework, but also relevant empirical data on the effect that consolidation in the radio industry since 1996 has had on diversity and competition in local markets.

1. Diversity

29. Diversity is one of the guiding principles of the Commission's local radio ownership rule. This principle is intended to advance the values of the First Amendment, which, as the Supreme Court stated, ''rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.''

30. In this proceeding, we intend to consider how our rules and polices concerning local radio ownership affect our goal of promoting diversity. To do this, we first must define the types of diversity we seek to ensure. Viewpoint diversity ensures that the public has access to ''a wide range of diverse and antagonistic opinions and interpretations.'' Outlet diversity ensures that the public has access to multiple distribution channels (*e.g.,* radio, broadcast television, and newspapers) from which it can access information and programming. Source diversity ensures that the public has access to information and programming from multiple content providers. We seek comment on which one or more of these three types of diversity should guide our public interest considerations. Are there other aspects of diversity that we should consider? Parties commenting on this issue should explain in detail how the public will be affected if we decide to emphasize one or more of these various aspects of diversity. We especially seek empirical data in support of parties' positions.

31. We also seek comment on how we should measure the success or failure of our diversity goal, however that goal is defined. We seek comment on the advantages and disadvantages of measuring diversity by looking, in whole or in part, to the number of independent station owners. What other measures of diversity, quantitative or qualitative, should we consider, and what tools do we have that enable us to measure diversity with a reasonable degree of accuracy? Are audience demographics an appropriate measure of diversity? Is competition an appropriate proxy for diversity, such that the presence of a competitive local market will assuage our concerns about diversity? Should we take a radio owner's market share, audience share, or subscribership into account in measuring diversity, and if so, how? In considering the various potential ways to measure diversity, we also seek comment on how their use comports with the values and principles embodied in the First Amendment of the Constitution.

32. In searching for ways to define and measure diversity, we are especially interested in the particular impact of our analysis on the radio broadcast industry and radio listeners. We seek comment on whether there are attributes of radio broadcasting that should lead us to define and measure diversity in radio differently from other media. Two attributes of radio broadcasting—its ability to reach mobile users and its audio-only programming—may give radio stations singular access to the public in certain situations, most notably when listeners are in their cars or at their offices or other places of employment. Are those or other attributes of radio broadcasting sufficiently unique that we should look at radio separately for diversity purposes, or do consumers consider other outlets as substitutes for radio? Are there other attributes we should consider, and how does any particular attribute affect how we define and measure diversity in conducting our public interest analysis?

33. We also must consider the appropriate geographic area over which to measure diversity as it relates to radio broadcasting. The current local radio

ownership rule contemplates that diversity in radio will be measured at the local level. This appears to be an appropriate result if diversity analysis is restricted to radio since radio stations that do not serve the local community do not contribute to media diversity in that community. Would the appropriate geographic area change if we consider other media, in particular Internet-related media such as Internet radio, as significant contributors of diversity? Does the appropriate geographic area for measuring diversity differ based on the type of information or programming involved, for example, local news and sports versus nationwide entertainment programming? Even if some aspects of diversity are not local in nature, should we nonetheless evaluate diversity at the local level in light of the value we traditionally have placed on ''localism'' in the broadcasting industry? Should the appropriate geographic area for measuring diversity be coextensive with the relevant geographic market for competition purposes? We seek comment responding to these questions.

34. We also seek comment on whether the level of diversity that the public enjoys varies among different demographic or income groups. Does this or other differences between broadcasting and other media reduce the level of diversity that certain demographic or income groups enjoy? What is the extent of any disparity in access to diversity, and how should we factor in that disparity in our diversity analysis? Parties commenting on this issue are encouraged to submit empirical data to support their positions.

35. As we have found previously, the current media marketplace appears robust in terms of the aggregate number of media outlets. As of June 30, 2001, the Commission had licensed 12,932 radio stations, 1,678 full power television stations, 2,396 low power TV stations, and 232 Class A TV stations. Today, there are seven national commercial television broadcast networks. The nation was served in 2000 by 1,422 daily newspapers with a total circulation of 55.8 million, and in 1996 by 7,915 weekly newspapers with a total circulation of approximately 81.6 million. As of June 2000, cable television systems served 67.4% of TV households, or 67.7 million people. These systems offered in the aggregate over 200 video programming services. Direct broadcast satellite (DBS) providers now serve nearly 13 million subscribers, or over 15% of all households served by multichannel video programming distributors (MVPDs), and other MVPDs serve another nearly 4 million subscribers. As of November 2000, 56% of Americans had access to the Internet from their homes. We accordingly seek comment on the significance of these figures and any other information about marketplace conditions that would inform our analysis.

36. The Commission has had both local and national ownership limits for radio broadcast stations. Pursuant to the 1996 Act, the Commission eliminated the national ownership limit on radio stations, in addition to relaxing its local radio ownership rules. As a result, significant consolidation occurred in the national and local radio markets. At approximately the same time that the 1996 Act became law, there were approximately 5,100 owners of commercial radio stations nationwide, while now there are only approximately 3,800 owners, a decrease of 25%. In March 1996, an Arbitron metro market had an average of 13.5 owners; in March 2001, the average was 10.3, a decrease of 22%. Other media also appear to have undergone similar consolidation. For example, in 1995 there were 543 entities nationwide that owned commercial TV stations, while today there are only 360. Does this consolidation in ownership offset the increases in media outlets? What is the relevance of this consolidation to our local radio ownership policies and to diversity in particular? Commenters are encouraged to submit empirical data on the impact of consolidation on diversity.

37. In examining the impact of greater media outlets and increased media consolidation, we note that there is considerable debate concerning the relationship between consolidation and viewpoint and source diversity. The Commission has noted the contrary theory that ''the greater the increase in concentration of ownership, the greater the opportunity for diversity of content.'' Under that theory, competing parties in a market have a commercial incentive to air ''greatest common denominator'' programming, while a single party that owns all stations in a market has a commercial incentive to air more diverse programming to appeal to all substantial interests.

38. We seek comment on these competing theories and on any relevant empirical analysis of these theories. Should commonly-owned media outlets be considered a single media ''voice'' in evaluating diversity? Does the answer depend on the type of programming involved, for example, entertainment programming versus news or public affairs programming, or on the type of media outlet involved? Does it make sense to treat increased media consolidation as contributing to diversity if the common owner exercises editorial discretion over news and programming? Even if some consolidation of media outlets does lead to greater diversity, is there a level of consolidation at which the maximum amount of diversity is achieved? How do we determine what that level is? In considering these questions, we are particularly interested in the actual experience of the radio industry. Has consolidation in local radio markets since 1996 lead to greater diversity? Commenters responding in the affirmative are encouraged to submit empirical data and analysis demonstrating both the increase in diversity and the causal link, as opposed to mere correlation, between the increase and greater consolidation in local markets. Commenters arguing that greater consolidation harms diversity also are encouraged to submit empirical data and analysis supporting their view. Evidence comparing the levels of diversity in local communities with different levels of radio concentration would be especially useful.

2. Competition

39. Radio station groups compete with each other in two ways: they compete to attract listeners, and they compete to attract advertising dollars. These two forms of competition are interrelated since advertising revenue is used to finance the production of programming, which in turn helps attract listeners, which then enables radio stations to charge advertisers. Between 1992 and 1996, the local radio ownership rule included, along with numerical limits, a presumption that a combination that created a station group with a greater than 25% audience share resulted in ''excessive concentration'' that was *prima facie* inconsistent with the public interest. As consolidation in local radio markets increased as a result of the 1996 Act, the Commission began to examine in assignment and transfer cases the potential competitive effect of proposed transactions in the local radio advertising market. Because advertisers provide the financial support for programming on commercial stations and have an incentive to prefer programming with widespread appeal, the Commission has considered competition in advertising markets to enhance the welfare of consumers.

40. As Americans increasingly are willing to pay for information and programming by subscribing to programming services, like satellite radio services, for example, it is incumbent on us to define more precisely the goals of our competition

analysis. Should we be interested in competition for listeners, competition for advertisers, or a combination of the two? With respect to advertising, does our authority to regulate the radio market justify our basing regulation on the level of competition in the radio advertising market? Are we interested in competition as a proxy for ensuring an appropriate level of diversity in a local community? If we conclude that section 202(b) definitively establishes the levels of radio station concentration that are consistent with our diversity interest, how would this affect the role of our competition analysis, if at all? Is one objective of competitive analysis to ensure a healthy radio advertising market so that radio stations not affiliated with larger station groups in a community will be able to attract sufficient advertising dollars to support their operations and their ability to provide valuable news and programming services to the public? Is one objective to protect radio advertisers from any anticompetitive pricing or conduct that could occur if a single party achieved market power or monopoly using the public airways? What precisely are the harms consumers suffer as advertising prices rise, and what empirical evidence of these harms is available? One of the objectives of our competition analysis must be to guide our biennial review examination. We seek comment on these objectives and on any other objectives that should guide the competition aspect of our public interest analysis.

41. Competition analysis requires us to define the relevant product and geographic markets in which radio stations compete, as well as the market share of the participants within the relevant market, and then weigh the competitive benefits of consolidation (*e.g.,* economies of scale and scope that may lead to lower costs and prices or superior products) against the harms (*e.g.,* the exercise of market power or reduction in output). We seek information that would help us conduct our analysis.

42. We seek comment on the relevant product market. If we look at advertising, does radio advertising constitute a separate market from other forms of media advertising? First, radio is exclusively sound-based. Second, radio allows advertisers to focus narrowly on specific demographic groups (*e.g.,* women age 18–49). Third, radio allows an advertiser to build repetition or frequency by advertising at a reasonable price. Fourth, the cost of producing a radio commercial is much lower than producing a television commercial. Fifth, radio allows for fast turnaround of advertising copy. Sixth, radio can reach people driving in their cars. We seek pertinent data that will help us determine the relevant product market.

43. We also seek comment on the relevant geographic market. We tentatively conclude that the relevant geographic market is local in nature, but we seek comment on the precise parameters of that market. What would be the appropriate market if we focused on listenership rather than advertising? With respect to advertising, is there a distinct regional or national market we also should consider in our analysis? If so, what are the relative sizes, in terms of radio station revenue and media revenue, of those markets vis-a-vis each other and local advertising markets? Do some radio stations rely more on national or regional advertising than on local advertising, and, if so, what characteristics lead to that result?

44. Under the Commission's current local radio ownership rule, the geographic market is defined based on a system of mutually overlapping signal contours, which makes the geographic market endogenous to a common owner's particular station holdings. Is this the appropriate basis for defining a relevant geographic market for purposes of a competition analysis? If so, why, and what are the benefits of this market definition? If not, what other geographic market definition should we use? Are Arbitron markets the relevant geographic market for purposes of our competition analysis? Can Arbitron radio markets be manipulated to make a particular market or transaction appear less troublesome. If so, how should we deal with this issue? If we adopt the Arbitron market as the relevant geographic market, how should we treat ''below-the-line'' stations that Arbitron reports as having audience shares or reportable revenues in the relevant market? Commenters advocating use of the Arbitron market should propose a relevant geographic market definition for radio stations not located in an Arbitron radio market. We also seek comment on any other potential geographic market definitions we should consider.

45. Once we define the relevant product and geographic markets, how should we measure the market share of those that compete in the market? The Commission has flagged proposed transactions based on market share. We seek comment on other sources of available data that we could use to determine market share and concentration levels. Although we have focused on advertising revenue and audience share as the principal potential measures of concentration, there may be other approaches we should consider.

46. Although a large market share in itself does not demonstrate market power, market power may be inferred when a party's market share is protected by high barriers to entry. We seek comment on barriers to entry into the relevant product and geographic markets.

47. Although we believe that entry by new stations is unlikely, we seek comment on whether the mere existence of other stations in the market negates market power, even where the current market shares of those stations are low. Should we consider the number of other stations in the market and their signal strength, either as an alternative to or in addition to market share? Is it easier to increase market share in the radio industry than it is in other industries? Or do market shares tend to remain static, with only small shifts in listening audiences? Further, does the amount of concentration in the market have an impact on the ability of stations to increase their market share? Is it easier for a station with a low audience share to increase its listenership in markets with low concentrations than it is in markets where one or two owners control a majority of the stations? What has been the experience of the radio industry since 1996?

48. After identifying and defining key market characteristics, we next consider the economic benefits and harms of permitting greater horizontal consolidation of local radio stations under common ownership. What are the benefits of these combinations, not only to the radio stations, but also to advertisers, and the public? We seek information on the nature and scope of efficiencies combinations might realize, and the nature and magnitude of benefits that flow through to advertisers and ultimately to consumers. We seek evidence that horizontal radio combinations produce efficiencies that flow through to advertisers and consumers. What economic harms might radio station consolidation bring? We seek additional information on the nature and scope of the economic harms that radio station combinations might bring. Studies and other evidence showing that advertising rates for radio station combinations are significantly higher after a consolidation than before a consolidation would be particularly useful. We also seek comment on associated harm to consumers. For example, if the existence of market power would prevent any efficiencies that otherwise would arise out of consolidation from flowing to the

public, or would harm the incentive of radio stations to produce quality programming responsive to community tastes and needs, that may be a harm we should consider. Similarly, if a certain level of consolidation causes the market to ''tip'' such that independently owned radio stations could not obtain sufficient revenue to remain on the air or fulfill their public interest obligations, the public interest also may be harmed.

49. We are also concerned about the possibility that coordinated behavior would increase as the number of independently owned competitors in a local market declines. Three factors could provide incentives for coordinated behavior in highly concentrated local radio markets: the ability to price discriminate, the ease of monitoring a collusive agreement, and the existence of barriers to entry. We seek comment on the relationship between radio concentration and coordinated behavior, and the adverse effects such behavior would have on listeners and advertisers.

C. Specific Case Studies

50. To assist us in formulating our radio rules and policies, we seek not only theoretical arguments but specific interest. We examine in detail particular local markets that have empirical data on the effect that consolidation will have on the public undergone substantial consolidation since 1996. We seek data on the public interest harms, if any, that have been caused by this consolidation. Has the public in these markets suffered from an unacceptable reduction in diversity? Have advertising rates increased? What has been the financial impact on independently owned radio stations? We also seek data on the specific benefits that consolidation has produced in those markets. Have the listeners received better quality radio programming, or greater diversity? Have efficiencies produced more radio voices than would otherwise have been possible? Has news and local affairs programming improved? We seek information that addresses these questions and any other public interest factors that we should consider in this proceeding.

51. Parties are encouraged to file information on any local market that they feel is relevant or helpful. In addition we would appreciate comments on three specific local markets that have experienced consolidation. The Arbitron metros that we seek information on are Syracuse, New York; Rockford, Illinois; and Florence, South Carolina.

52. The Syracuse radio metro consists of three New York counties: Madison, Onondaga and Oswego. The population of the Syracuse metro is estimated to be 650,100. This metro is the 75th largest metropolitan area by population and ranks 67th in terms of radio advertising revenue. The three Syracuse counties generated $7.2 billion in retail sales in 2000. Local advertising accounts for approximately 73 percent of station revenues.

53. The Rockford radio metro consists of two Illinois counties: Boone and Winnebago . The population of the Rockford metro is estimated to be 308,500. This metro is the 150th largest metropolitan area by population and ranks 139th in terms of radio advertising revenue. The three Rockford counties generated $3.9 billion in retail sales in 2000. Local advertising accounts for approximately 93 percent of station revenues.

54. The Florence radio metro consists of two South Carolina counties: Darlington and Florence. The population of the Florence metro is estimated to be 192,400. This metro is the 204th largest metropolitan area by population and ranks 181st in terms of radio advertising revenue. The three Florence counties generated $2.4 billion in retail sales in 2000. Local advertising accounts for approximately 80 percent of station revenues.

D. Options

55. We explore the potential ways we could use the results of the preceding diversity and competition analyses to formulate a concrete framework for addressing proposed combinations of radio stations in local markets.

1. Bright-line Rules or Case-by-Case Analysis

56. We first seek comment on the general advantages and disadvantages of relying on numerical limits or other bright-line rules to guide our public interest determination versus conducting a case-by-case public interest analysis. We see several advantages to the use of bright-line rules rather than case-by-case analysis.

57. We also see several advantages to conducting case-by-case analyses. A case-specific analysis, would allow the Commission to take into account the nuances of the particular case, and to adapt more readily to changing market (and other regulatory) conditions.

58. We seek comment on the various trade-offs between bright-line rules and case-by-case analysis. We seek comment whether the characteristics of the radio industry make it more susceptible to bright line strictures or case-by-case review or proposed radio combinations. What are the common characteristics of various radio combinations, and what differences do they have that would be difficult to encapsulate in a rule? Are there other characteristics that weigh in favor of relying on either predetermined rules or case-specific review in conducting a public interest review of a proposed combination? Are diversity concerns more amenable to being encapsulated in a bright-line rule than competition concerns?

59. We also seek comment on whether the advantages of both bright-line rules and case-by-case analysis be obtained by other regulatory tools, such as presumptions, processing guidelines, and screens. To what extent has the 50/70 screen been helpful, and what are its disadvantages? If appropriate, we could adopt a combination of rules, fact-specific analysis, and other formal and informal regulatory tools. We seek comment on the appropriate regulatory ''mix'' that would provide the greatest benefit to the agency, the industry, and the public.

2. Implementation of Radio Rules and Policies

60. We examine a number of possible frameworks that we could adopt to implement our policies on local radio ownership. We discuss several and seek comment on their advantages, disadvantages, and possible ramifications on our diversity and competition goals. We also invite suggestions for other possible frameworks that we should consider.

61. *Rely exclusively on current numerical limits.* To the extent we have the authority under the statutory framework to consider public interest factors other than compliance with the numerical limits of the local radio ownership rule, should we nonetheless rely on those limits to address our competition and diversity concerns? We seek comment on the advantages and disadvantages of relying exclusively on numerical limits. If we decide to rely exclusively on numerical limits, should we change the market definition we use to apply the rule to reflect more accurately the relevant geographic market? We seek any additional comments that would be useful in light of the broader policy issues raised in this proceeding.

62. *Rely exclusively on modified rule.* Another possibility we may consider is modifying the local radio ownership rule to revise the numerical limits or adopt a new framework entirely. We seek comment on whether our authority to tighten or loosen the numerical limits in the local radio ownership rule, or

otherwise to alter the rule, is limited by the statutory framework. To the extent we have the authority to make such changes, we seek comment on what changes we should make. Aside from revising the numerical limits, are there other standards we could adopt? For example, between 1992 and 1996, the rule provided for consideration of excessive market concentration, which was presumed to exist if a proposed radio combination would have had an audience share exceeding 25% in the Arbitron market. Do we have the authority to adopt an audience share limit, and, if so, should we adopt a similar presumption or bright-line rule? Should such a limit replace or accompany a numerical limit? Would such a rule be beneficial in promoting diversity even if the relevant market is competitive, or would numerical limit best meet our concerns regarding diversity and a market share limit best meet our concerns regarding undue market power?

63. Commenters who propose a market share limit should discuss the following issues: Should we examine audience share, share of the advertising revenue, or some other measure? If we adopt a presumption instead of a rule, what evidence would be sufficient to overcome the presumption? What percentage limit should we adopt, and why should we adopt it? For example, we could adopt limits that attempt to ensure the presence of at least three competitive firms. Commenters supporting this approach should explain how many firms should we seek to ensure remain in the market (counting all commonly controlled stations as one firm) and what maximum market share limit should we impose. Commenters should provide economic, other theoretical, and actual evidentiary support for such limits.

64. Commenters proposing that we modify the local radio ownership rule to change the numerical limits or to include new standards or presumptions should also propose what action we should take with respect to existing combinations that would not comply with the revised rule? Should we require divestiture? Should we grandfather those station groupings? Should we permit assignment and transfer of potentially non-compliant station groups to third parties? What are the benefits and harms of adopting these various approaches?

65. *Case-by-case competition analysis.* Rather than attempting to establish a bright-line rule that would address competition issues, we could examine the public interest concerns of any proposed radio combination on a case-by-case basis. We could adopt an entirely case-by-case approach or conduct a case-by-case analysis within the context of specific rules or presumptions. We could limit our case-by-case approach to competition issues, while using a bright-line rule to protect diversity. We seek comment on these alternatives.

66. To the extent, we are required to conduct a competition analysis of a proposed assignment or transfer control of a radio broadcast license, we nevertheless may have some latitude to consider the actions of the antitrust enforcement agencies.

E. Framework for Possible Case-by-Case Competitive Analysis

67. We consider what the framework for a case-by-case competitive analysis should be if we decide to adopt that approach. We lay out certain possible frameworks and competitive factors we could take into account in evaluating a proposed radio station combination. We seek comment on these factors and on our framework generally.

1. General Framework

68. In evaluating the competitive impact of a proposed license transfer, we could adopt the framework that we have used for assessing market power in other contexts, which is also embodied in the antitrust laws. We would first analyze each proposed radio combination by defining the relevant markets. Next, we would evaluate the effects of the transaction on competition in the relevant market. We seek comment on this approach.

69. One alternative of the approach is to develop certain assumptions that would apply to all proposed radio station combinations. Earlier in this *NPRM,* we sought comment about the relevant product and geographic markets to which radio belongs, barriers to entry, and the benefits and costs of consolidation. We seek comment concerning the assumptions that we could consistently apply in evaluating applications proposing radio station combinations and the advantages or disadvantages of those assumptions. If we adopt certain assumptions, we propose that the party seeking to demonstrate that an assumption is not true in a particular case bears the burden of proof as to that fact. We seek comment on this proposal.

70. Another possible alternative to the basic analytical framework is to examine not only whether a proposed transaction could lead to the exercise of market power, but to take the additional step of considering whether that market power would harm consumers, as opposed to advertisers, of radio broadcasting services. Are there certain situations in which the exercise of market power would not harm consumers? Are there situations in which consumers would affirmatively benefit if we permitted a certain degree of market power in the relevant market? For example, would permitting some degree of market power in smaller geographic markets generate more diverse or better quality programming for the people living in those markets? If so, how do we draw the line between acceptable levels of market power and unacceptable levels of control over local media, and what are the relevant considerations we should examine to help us determine on which side of the line a particular transaction falls? We seek comment on these issues.

2. Specific Factors

71. We seek comment on the specific factors we should consider within our general framework. We seek comment on how we should evaluate these factors in the context of a particular case. In addition, are there other factors we should consider?

72. We seek comment on how we should review applications proposing to assign or transfer control of existing station groups to a new owner.

73. We invite comment on how to treat under our proposed guidelines claims that a station is failing. Highly concentrated radio markets often contain stations with small revenue share that are independent of the one or two largest radio groups.

74. In our decision revising the television ownership rules, we adopted several criteria to evaluate whether a failing station showing would justify waiver of the television duopoly rule in a particular case. We stated that we would presume a waiver would serve the public interest if each of the following criteria were satisfied:

(a) One of the merging stations has had low all-day audience share.

(b) The financial condition of one of the merging stations is poor. A waiver is more likely to be granted where one or both of the stations has had a negative cash flow for the previous three years. We required the applicant to submit data, such as detailed income statements and balance sheets, to demonstrate this and stated that the Commission staff will assess the reasonableness of the applicant's showing by comparing data regarding the station's expenses to industry averages.

(c) The transaction will produce public interest benefits. A waiver will be granted where the applicant

demonstrates that the tangible and verifiable benefits of the transaction outweigh any harm to competition and diversity. At the end of the stations' license terms, the owner of the combined stations must certify to the Commission that the public interest benefits of the transaction are being fulfilled, including a specific, factual showing of the program-related benefits that have accrued to the public. Cost savings or other efficiencies, standing alone, will not constitute a sufficient showing.

(d) The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; selling the station to an out-of-market buyer would result in an artificially depressed price. As with the showing required of failed station waiver applicants, one way to satisfy this fourth criterion is to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the station, and that no reasonable offer from an entity outside the market has been received.

We further provided that a combination formed as a result of a failing station waiver could be transferred only if the combination met the revised duopoly rule or the waiver standards (including the failing standard just described) at the time of the transfer.

75. We invite comment as to whether to use a similar approach in our competitive analysis. Third, we seek comment on how we should analyze applications proposing the granting of a new license or the acquisition of an unbuilt facility or a ''dark'' station. Competitive analysis focusing on concentration in the advertising market or audience shares would be insufficient to analyze these transactions because new licenses, unbuilt stations, and dark stations generally will not have an associated radio advertising business or audience share. In the absence of this data, what should we consider in determining the effect of a proposed transaction on competition? And how should we weigh the relevant public interest benefits and harms?

3. Treatment of Brokerage and Sales Agreements

76. *Local Marketing Agreements and Time Brokerage Agreements.* A local marketing agreement (LMA) and time brokerage agreement (TBA) is ''a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming.'' As we consider whether and how to conduct case-by-case competitive analyses of radio transactions, we seek comment on the appropriate regulatory treatment of LMAs and TBAs.

77. To the extent we decide to conduct a case-by-case analysis of proposed radio transactions, how should we evaluate LMAs or TBAs? Should we continue the practice of treating the merging parties as independent economic actors regardless of the economic realities of the relevant market? If we ignore economic realities, what purpose would our competitive analysis serve? On the other hand, if we treat the merging parties as a single economic unit because of a pre-existing LMA or TBA, what potential competitive harm would our analysis ever uncover? We could address this problem by requiring prior Commission approval of LMAs and TBAs, in some if not all circumstances. If so, what would those circumstances be? What are the costs and benefits of these various procedures? If we adopt new policies towards LMAs or TBAs, how should we apply those policies towards pre-existing agreements? We seek comment on these proposals and on any other proposals that we should consider with regard to the regulatory treatment of LMAs and TBAs?

78. *Joint Sales Agreement.* Joint sales agreements (JSAs) involve primarily the sale of advertising time and not decisions concerning programming.

79. We seek comment on the appropriate regulatory treatment of JSAs. Even if we adopt a bright line rule, JSAs would not be attributable to the sales agent. Should we reconsider this blanket exemption to attribution in light of the new local radio ownership policy we intend to adopt? If so, what should our new rule be? To the extent we decide to conduct a case-by-case analysis of proposed radio transactions, how should we evaluate JSAs? Should we distinguish between JSAs and LMAs or TBAs in a case-by-case review of proposed transactions or in other contexts? What are the reasons for and against affording similar treatment to all three types of agreements?

IV. Interim Policy

80. We set forth in this section the interim policy that the Commission will apply to guide its actions on radio assignment and transfer of control applications pending a decision in this proceeding. We recognize that certain guidelines need to be established both to handle currently pending radio assignment and transfer applications and to address any future applications filed while this proceeding is pending. At the same time, we are mindful of the concern that our policy not expressly or implicitly prejudge, or be viewed as prejudging, our ultimate decision in this proceeding. In that regard, we believe that any fundamental changes we make to our policy and procedures governing radio station combinations should be the result of the record in this rulemaking proceeding, and should not be implemented as an interim measure. We believe that the interim policy we are adopting today strikes a fair balance that addresses our statutory responsibilities while providing guidance to applicants and the public on the process the Commission will use to resolve pending applications during this interim period.

81. Consistent with our precedent and the principles, we will continue to examine the potential competitive effects of proposed radio station combinations, and, and to that end, we will continue to rely on the 50/70 screen to bring to our attention proposed radio transactions that may raise competitive concerns. While we are aware that the utility and appropriateness of 50/70 screen has been the subject of disagreement, we are concerned that adopting another screen or set of processing guidelines on an interim basis would create significant confusion and uncertainty to applicants and could be seen as prejudging the rulemaking proceeding.

82. We will presume that an application that falls below the screen will not raise competition concerns, and the staff will not conduct a further competitive analysis of those proposed transactions absent the filing of a petition to deny raising competitive issues. We establish the following generic categories of information that may be requested or received by the staff in conducting its competitive analysis:

(a) *Product market definition.* During the interim period, the Commission will presume that the relevant product market is radio advertising. The staff nevertheless should consider evidence from the parties that the relevant product market in a specific case includes other forms of media advertising or should be based on listenership rather than advertising.

(b) *Geographic market definition.* During the interim period, the Commission will presume that the relevant geographic market is the Arbitron metro market. The staff nevertheless may ask for or receive evidence from the parties that the relevant geographic market in a specific case is larger, smaller, or otherwise

different from the Arbitron metro market.

(c) *Market participants.* The staff may ask for or receive evidence concerning the firms that participate in the relevant product and geographic markets. The list of market participants should include firms that could enter the relevant product and geographic markets within one year without expending significant sunk costs of entry and exit in response to a small but significant and non-transitory increase in price. If the presumptive product and geographic market definitions are used, the list of market participants should include operating commercial radio stations and any ''dark'' station that might be expected to become operational in response to such an increase in price.

(d) *Market shares and market concentration.* The staff may ask for or receive evidence concerning the market shares of the market participants. If the presumptive product and geographic market definitions are used, the radio advertising revenues reported in the BIA Master Access Database will be presumed to be an accurate reflection of actual market shares, absent persuasive evidence that another measure of market share should be used.

(e) *Barriers to entry.* The staff may ask for or receive evidence concerning the barriers to entry into the relevant product and geographic markets, including the timeliness, likelihood, and sufficiency of entry to counter any potential market power.

(f) *Potential adverse competitive effects.* The staff may ask for or receive evidence concerning the potential adverse competitive effects of a proposed transaction. Relevant evidence may include direct proof of adverse competitive effects or facts that demonstrate that structural conditions (*e.g.,* a high market share and significant barriers to entry) will facilitate the exercise of market power.

(g) *Efficiencies and other public interest benefits.* The staff may ask for or receive evidence concerning any economic efficiencies that the proposed transaction would produce. In addition, the staff may ask for or receive evidence concerning other public interest benefits the proposed transaction would provide listeners or advertisers, such as improvements in the quality, scope, and quantity of community responsive programming, improved community service, and the furtherance of localism. Parties asserting that a proposed transaction will produce efficiencies or other public interest benefits should show both how the transaction will produce those benefits and how those benefits will flow through to listeners or advertisers.

83. After completing its preliminary competitive analysis of the proposed transaction, the staff may grant any application that is consistent with the public interest and that may be granted on delegated authority. For applications that the staff cannot grant, we establish the following timetable to ensure that they are resolved expeditiously. For each application that, as of the date of adoption of this *NPRM*, has been pending for over one year, within 90 days of the date of adoption of this *NPRM*, the staff will distribute to the Commission a draft order recommending that the application either be granted or designated for hearing. For all other currently pending applications, within six months of the date of adoption of this *NPRM*, the staff will distribute to the Commission a draft order recommending that the application either be granted or designated for hearing. For all applications filed after the date of adoption of this *NPRM*, within six months of the date after such application is filed, the staff will distribute to the Commission a draft order recommending that such application either be granted or be designated for hearing. In all of these cases, the draft order shall include the relevant facts of the proposed transaction, and the staff's competitive analysis and recommendation, including any issues to be resolved at hearing (if the staff recommends a hearing). After receiving the draft order, the Commission shall then decide whether the relevant factors support grant (with or without conditions) of an application or whether the application should be designated for hearing.

84. For applications that the Commission decides to designate for hearing, the hearing designation order shall afford the applicants with the opportunity to elect instead to have their applications held pending completion of this rulemaking proceeding and having the outcome of this proceeding apply to their application. We provide this election because we believe it is appropriate to provide applicants with the ability to have their applications evaluated under our permanent radio rules and policies rather than our interim policy. We caution, however, that our provision of this election will not in any way prejudice or limit the range of actions we could take in processing pending applications, including designation for hearing, upon completion of this rulemaking.

85. The interim policy will apply to currently pending applications to assign or transfer control of radio broadcast stations. This interim policy also will apply to radio assignment or transfer applications filed on or after the date we adopt this *NPRM* until we adopt a decision in this proceeding.

V. Administrative Matters

86. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before 60 days after publication of the item in the **Federal Register**, and reply comments on or before 90 days after publication of the item in the **Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

87. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554.

88. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, S.W., Room, 2–C207, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for

Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, MM Docket Nos. 01–317, 00–244, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY–B402, Washington, DC 20554.

89. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, S.W., CY–A257, Washington, D.C. 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov.* Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: *www.fcc.gov/dtf.* Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

90. *Ex Parte Rules.* This is a permit-but-disclose notice and comment proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See generally* sections 1.1202, 1.1203, and 1.1206(a).

91. *Initial Regulatory Flexibility Analysis* (''IRFA''). As required by section 603 of the Regulatory Flexibility Act (''RFA''), the Commission has prepared an IRFA of the possible significant economic impact on small entities of the proposals contained in this *NPRM.* Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM,* but they must have a distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'') in accordance with section 603(a) of the RFA, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

92. *Authority.* This *NPRM* is issued pursuant to authority contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

VI. Ordering Clauses

93. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310 this NPRM are adopted.

94. The Interim Policy set forth herein *is adopted.*

95. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *NPRM* , including the IRFA, to the Chief Counsel for Advocacy of the SBA.

VII. Initial Regulatory Flexibility Analysis

96. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared this present IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM* . Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of SBA. See 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

97. Application to and consent by the Commission are required under section 310 of the Communications Act before the sale of any licensed radio broadcast station may be consummated. The Commission may grant its consent only if it determines that ''the public interest, convenience and necessity will be served thereby.'' 47 U.S.C. 310(d). The effects of a proposed transaction on the diversity of voices and economic competition in a given market have long been core considerations in making this public interest determination. The Commission's concern for diversity and competition in broadcast markets has prompted us to adopt and maintain structural ownership rules intended to vindicate these interests. Until recently, these ownership rules have been sufficiently strict that we have not been presented with proposed transactions that comply with the ownership rules but nonetheless present economic concentration issues. The Telecommunications Act of 1996, however, substantially relaxed the Commission's local radio ownership rules. Heretofore, the Commission's radio ownership rules have been based strictly on the number of stations proposed for common ownership, without regard to the power or dominance of the stations that are being combined. This was not a problem under the former Commission rules which strictly circumscribed the number of radio stations that could be commonly owned in a local market. Now, however, under the new rules, which allow greater numbers of radio stations to be commonly owned in local markets, the Commission has encountered sales applications that propose transactions which comply with the numerical station limits but which result in substantial economic concentration in the relevant economic markets. In such cases, the Commission ''has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local ownership limits would otherwise have an adverse competitive effect in a particular radio market and thus, would be inconsistent with the public interest. 47 U.S.C. 309(a) (requiring the Commission to make a determination that the transfer or assignment of a broadcast license would be in the public interest).'' Accordingly, we are adopting this *NPRM* to consider possible changes to our local radio ownership rules and policies.

Legal Basis

98. This *NPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, and 310, of the Communications Act, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

99. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the

Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

100. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

101. The SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS code. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of June 30, 2001, Commission records indicate that 12,932 radio stations (both commercial and noncommercial) were operating of which 2,216 were noncommercial educational FM radio stations. Applying the 1992 percentage of station establishments producing less than $5 million in revenue (*i.e.,* 96 percent) to the number of commercial radio stations in operation, (*i.e.,* 10,716) indicates that 10,287 of these radio stations would be considered ''small businesses'' or ''small organizations.'' These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

102. The *NPRM* proposes no new recordkeeping or other compliance requirements associated with the subject rules and policies. These rules amend the Commission's procedures and review processes and do not change existing documentation and application requirements.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

103. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

104. In this *NPRM*, the Commission explores the underpinnings of two principles underlying the regulation of the radio broadcast industry, namely diversity and competition. The principles of diversity and competition are of particular import to small entities. Thus we seek comment on the general advantages and disadvantages of relying on numerical limits or other bright-line rules to guide our public interest determination versus conducting a case-by-case competitive analysis. The framework minimizes the impact on small entities by not subjecting to further competitive analysis transactions below a threshold level.

105. This *NPRM* invites comment on a number of alternative interpretations of the relationship between the revision of local radio ownership rules, embodied in section 202(b) of the Telecommunications Act of 1996 and the Commission's public interest mandate. Specifically, we propose alternative views on that relationship in the *NPRM* seek comment on these proposals, and invite additional possible interpretations of the relevant statutory provisions. Further, the *NPRM* seeks comment on how the Commission's rules and policies concerning local radio ownership affect our goal of promoting diversity. In light of the fact that a majority of the radio broadcasting stations likely to be affected are small, we seek comment on the impact of industry consolidation on both viewpoint and source diversity.

106. In addition to the principle of diversity, this *NPRM* seeks comment on the principle of competition in the radio broadcast industry, with regard to the definitions of the marketplace and measurement of market share.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

107. None.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–30526 Filed 12–10–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 01–317 and 00–244; FCC 01–329]

RIN 4217

Definition of Radio Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes changes to local ownership rules and policies concerning multiple ownership of radio broadcasting stations. The Commission examines the effect our current rules has had on the public and seeks comment to better serve our communities. This action is also intended to consider possible changes to our current local market radio ownership rules and policies in accordance with the Telecommunications Act of 1996. Because of the similarity of the issues presented in Multiple Ownership of Radio Broadcast Stations in Local Markets to those in the Matter of Definition of Radio Markets, the two actions were, in effect, consolidated.

DATES: Comments are due February 11, 2002. Reply comments are due March 11, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joshi Nandan, Office of General Counsel, (202) 418–1755.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Further Notice of Proposed Rule Making* (''*FNPRM*'') in MM Docket No. 00–244, FCC 01–329, adopted November 8, 2001, and released November 9, 2001. The complete text of this *FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.* This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810–0260, TTY (202) 418–2555, or *mcontee@fcc.gov.* The *FNPRM* can be found on the Internet at the Commission's website: *http://www.fcc.gov.*

1. The issues presented herein, and the substance of this *FNPRM* are identical to those presented in the *Notice of Proposed Rule Making,* in the Matter of Rules and Policy Concerning the Multiple Ownership of Radio Broadcast Stations in Local Markets (MM Docket No. 00–317) published elsewhere in this issue of the **Federal Register**.

2. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file. Comments are due February 11, 2002. Reply comments are due March 11, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

3. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW–A325, Washington, DC 20554.

4. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW., Room, 2–C207, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, MM Docket Nos. 01–317, 00–244, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

5. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov.* Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: *www.fcc.gov/dtf.* Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

6. *Ex Parte Rules.* This is a permit-but-disclose notice and comment proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See generally* sections 1.1202, 1.1203, and 1.1206(a).

7. *Initial Regulatory Flexibility Analysis* (''IRFA''). As required by section 603 of the Regulatory Flexibility Act (''RFA''), the Commission has prepared an IRFA of the possible significant economic impact on small entities of the proposals contained in this *FNPRM.* Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *FNPRM,* but they must have a distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'') in accordance with section 603(a) of the RFA, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

8. *Authority.* This *FNPRM* is issued pursuant to authority contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

9. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310 this *FNPRM are adopted.*

10. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the SBA.

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared this present IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and

must be filed by the deadlines for comments on the *FNPRM.* The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of SBA. See 5 U.S.C. 603(a). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

12. Application to and consent by the Commission are required under section 310 of the Communications Act before the sale of any licensed radio broadcast station may be consummated. The Commission may grant its consent only if it determines that ''the public interest, convenience and necessity will be served thereby.'' 47 U.S.C. 310(d). The effects of a proposed transaction on the diversity of voices and economic competition in a given market have long been core considerations in making this public interest determination. The Commission's concern for diversity and competition in broadcast markets has prompted us to adopt and maintain structural ownership rules intended to vindicate these interests. Until recently, these ownership rules have been sufficiently strict that we have not been presented with proposed transactions that comply with the ownership rules but nonetheless present economic concentration issues. The Telecommunications Act of 1996, however, substantially relaxed the Commission's local radio ownership rules. Heretofore, the Commission's radio ownership rules have been based strictly on the number of stations proposed for common ownership, without regard to the power or dominance of the stations that are being combined. This was not a problem under the former Commission rules which strictly circumscribed the number of radio stations that could be commonly owned in a local market. Now, however, under the new rules, which allow greater numbers of radio stations to be commonly owned in local markets, the Commission has encountered sales applications that propose transactions which comply with the numerical station limits but which result in substantial economic concentration in the relevant economic markets. In such cases, the Commission ''has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local ownership limits would otherwise have an adverse competitive effect in a particular radio market and thus, would be inconsistent with the public interest. 47 U.S.C. 309(a) (requiring the Commission to make a determination that the transfer or assignment of a broadcast license would be in the public interest).'' Accordingly, we are adopting this *FNPRM* to consider possible changes to our local radio ownership rules and policies.

Legal Basis

13. This *FNPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, and 310, of the Communications Act, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

14. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

15. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

16. The SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS code. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of June 30, 2001, Commission records indicate that 12,932 radio stations (both commercial and noncommercial) were operating of which 2,216 were noncommercial educational FM radio stations. Applying the 1992 percentage of station establishments producing less than $5 million in revenue (*i.e.,* 96 percent) to the number of commercial radio stations in operation, (*i.e.,* 10,716) indicates that 10,287 of these radio stations would be considered ''small businesses'' or ''small organizations.'' These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. The *FNPRM* proposes no new recordkeeping or other compliance requirements associated with the subject rules and policies. These rules amend the Commission's procedures and review processes and do not change existing documentation and application requirements.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design,

standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

19. In this *FNPRM,* the Commission explores the underpinnings of two principles underlying the regulation of the radio broadcast industry, namely diversity and competition. The principles of diversity and competition are of particular import to small entities. Thus we seek comment on the general advantages and disadvantages of relying on numerical limits or other bright-line rules to guide our public interest determination versus conducting a case-by-case competitive analysis. The framework minimizes the impact on small entities by not subjecting to further competitive analysis transactions below a threshold level.

20. This *FNPRM* invites comment on a number of alternative interpretations of the relationship between the revision of local radio ownership rules, embodied in section 202(b) of the Telecommunications Act of 1996 and the Commission's public interest mandate. Specifically, we propose alternative views on that relationship in the *FNPRM,* seek comment on these proposals, and invite additional possible interpretations of the relevant statutory provisions. Further, the *FNPRM* seeks comment on how the Commission's rules and policies concerning local radio ownership affect our goal of promoting diversity. In light of the fact that a majority of the radio broadcasting stations likely to be affected are small, we seek comment on the impact of industry consolidation on both viewpoint and source diversity.

21. In addition to the principle of diversity, this *FNPRM* seeks comment on the principle of competition in the radio broadcast industry, with regard to the definitions of the marketplace and measurement of market share.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–30527 Filed 12–10–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA 2001–11068, Notice No. 1]

RIN 2130–AB39

Control of Alcohol and Drug Use: Proposed Application of Random Testing and Other Requirements to Employees of a Foreign Railroad Who Are Based Outside the United States and Perform Train or Dispatching Service in the United States; Request for Comment on Even Broader Application of Rules and on Implementation Issues

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking (NPRM) and request for comments.

SUMMARY: In general, FRA's regulation on the control of alcohol and drug use (49 CFR part 219) currently applies to all railroads that operate on the general railroad system of transportation in the United States. However, part 219 presently exempts certain operations by foreign railroads and certain small railroads from certain subparts. In this NPRM, FRA proposes to narrow the scope of these exemptions.

This NPRM also seeks to reopen a discussion of part 219 implementation issues, many of which were first raised in FRA's 1992 advance notice of proposed rulemaking on this subject. Finally, FRA invites comment on whether it should expand the basis for requiring post-accident testing (subpart C) and testing for cause (subpart D) of part 219 to include events that occur outside the United States.

DATES: (1) *Written Comments:* Written comments must be received by February 11, 2002. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing:* FRA will conduct a public hearing to provide interested parties an opportunity to comment on this proposed rule. FRA will issue a separate document in the **Federal Register** informing interested parties of the date and location of the hearing.

ADDRESSES: Anyone wishing to file a comment should refer to the FRA docket and notice numbers (FRA Docket No. FRA 2001–11068, Notice No. 1). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, U.S. Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or

Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* For instructions on how to submit comments electronically, visit the Docket Management System web site and click on the ''Help'' menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For technical issues, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202–493–6313). For legal issues, Patricia V. Sun, Trial Attorney, Office of the Chief Counsel, RCC–11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION[1]:

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I. Introduction

A. Summary

Paragraph (c) of § 219.3 now exempts employees of a foreign railroad whose primary reporting point is outside the United States (a foreign railroad's foreign-based employees or ''FRFB employees'') who perform service in the United States covered by the hours of service laws (''covered service'')—train service, dispatching service, or signal service—from subparts E (identification of troubled employees), F (pre-employment testing), and G (random testing). FRA proposes to limit the exemption to FRFB signal service employees, who are currently few in number. FRA would apply all of part 219 to FRFB train and dispatching service employees, including pre-employment testing under subpart F for all individuals seeking to serve in such capacity, unless their employer qualifies as a small railroad under proposed § 219.3(b). This change, together with the Interim Final Rule discussed at footnote 1 below, and will ensure that dispatchers controlling the bulk of rail operations in the United States are covered by part 219

Paragraph (b)(2) of § 219.3 currently exempts railroads employing not more than 15 covered service employees from the requirements of subparts D (testing for cause), E, F, and G, and paragraph (b)(3) exempts railroads having fewer than 400,000 total manhours from the requirements of subpart I (annual reports). In this NPRM, FRA proposes to amend paragraphs (b)(2) and (3) to take into account a railroad's operations outside the United States in determining its size and eligibility for the ''small railroad'' exemptions.

As mentioned above, FRA also invites a discussion of part 219 implementation issues, and comment on whether it should expand the basis for requiring post-accident testing (subpart C) and testing for cause to include events that occur outside the United States.

B. Abbreviations

The following abbreviations are used with some frequency in this preamble and are collected here for the convenience of the reader:

ANPRM Advance Notice of Proposed Rulemaking
CFR Code of Federal Regulations
ch. chapter
DOT United States Department of Transportation
FAA Federal Aviation Administration
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FR **Federal Register**
FRA Federal Railroad Administration
FRFB foreign railroad's foreign-based
HHS United States Department of Health and Human Services
MRO Medical Review Officer
NPRM Notice of Proposed Rulemaking
Pub. L. Public Law
OST Office of the Secretary, United States Department of Transportation
SAP Substance Abuse Professional
U.S.C. United States Code

II. Alcohol Abuse and Illegal Drug Use by Train Employees and Dispatching Service Employees Pose Significant Dangers to the Safety of Railroad Operations

A. Safety-Sensitive Role of Train Employees

Train employees include engineers, conductors, switchmen, trainmen, brakemen, and hostlers. *See* statement of agency policy and interpretation of the hours of service laws (49 U.S.C. ch. 211 and related provisions in chs. 201 and 213), including 49 U.S.C. 21101(5) and 21103, at 49 CFR part 228, appendix A. These train employees are responsible for safely assembling, disassembling, and operating passenger and freight trains, including working on and around the equipment. Train crew members can become fatigued because of the long and varied hours they are expected to work. Because trains have long stopping distances, a small mistake in application of power or brakes by an engineer or the misreading or forgetting of a signal or a mandatory directive by any of the crew could have serious consequences. For example, such a small mistake could cause the train to run over a crew member, or to exceed its authorized speed and possibly derail or collide with another train, with resulting injuries or death to train crews, passengers, or both, and possible harm to surrounding communities by

[1] Elsewhere in today's **Federal Register**, FRA published an Interim Final Rule (new 49 CFR part 241). That rule requires all dispatching of railroad operations that occur in the United States to be performed in the United States, with three limited exceptions. First, a railroad is allowed to conduct extraterritorial dispatching (dispatching of railroad operations that occur in the United States by dispatchers who are located outside the United States) in emergency situations. Second, the grandfathering provision of the rule permits continued extraterritorial dispatching of the very limited track segments in the United States that were regularly being so dispatched in December 1999. Third, certain other fringe border operations are permitted. FRA does not propose at this time to apply part 219 to the limited number of extraterritorial dispatchers covered by the grandfathering provision in part 241, but invites public comment on this issue.

the release of hazardous materials. These errors by the train crew could also cause their train to enter into a track segment without authority, endangering authorized occupants of the track such as another train or a roadway work group. The crew's failure to sound the locomotive horn at a grade crossing could endanger motorists. Again, the long stopping distances required by trains can make it very difficult for a crew to recover from such mistakes or omissions in time to avoid accidents and consequent property damage, injury, or death. Train crew members whose judgment and motor skills are impaired by the use of alcohol or drugs pose a significant safety risk to themselves and others.

Adding to the criticality of the train crew's need to be subject to an effective safety program that encourages them to be in the best possible physical and mental state is the environment in which they work. Road train crews and road switching crews in particular (as opposed to switch crews who work in yards) normally work independent of supervision, without the supervisory monitoring that could assist in identifying substance-abuse symptoms, such as poor work performance, and allowing subsequent timely remedies. Misuse of drugs and alcohol is often difficult to identify under the best of circumstances, and this is particularly true of drugs such as cocaine, for which the chronic or after-effects of the drug may be of greater concern than the acute effects. Even practiced, functional alcoholics can sometimes avoid detection over long periods of time.

Train crews do not experience the deterrence provided by the timely oversight of a supervisor because of their normal, independent working conditions. Random alcohol and drug testing of these train employees helps to provide the necessary deterrent effect.

B. Safety-Sensitive Role of Dispatching Service Employees

Proper dispatching is essential for safe railroad operations. Because trains have long stopping distances, train operations are generally not conducted by line of sight. Rather, the route ahead must be cleared for the train's movement. Switches must be aligned properly along the route. Potentially conflicting movements must be guarded against in order to prevent collisions. Dispatching service employees actually ''steer'' the train by remotely aligning switches; these dispatchers determine whether the train should stop or move, and if so, at what speed, by operating signals and issuing train orders and other forms of movement authority or speed restriction. *See* 49 U.S.C. 21101(2), 21105 and 49 CFR part 228, appendix A. In addition, dispatchers protect track gangs and other roadway workers from passing trains by issuing authorities for working limits. Train crews on board locomotives carry out the dispatchers' instructions and are responsible for actually moving the train, but dispatchers make it possible to do so safely. A dispatcher's judgment must be sound if railroad operations are to be conducted safely.

C. The Dangers to Railroad Operations Posed by Alcohol Abuse and Illegal Drug Use by Train Employees and Dispatching Service Employees

Alcohol and drug use results in safety risks and consequences that are unacceptable in the railroad environment. The loss of life, injuries, and property damage in accidents caused by train employees or dispatchers impaired by alcohol or drugs or both has been well documented. *See* 49 FR 24254–24264 (June 12, 1984) and 53 FR 47105 (Nov. 21, 1988). One of the most serious of these accidents in the United States was the January 4, 1987 train accident at Chase, Maryland, in which 16 persons were killed and 174 injured when a Conrail train passed an absolute restrictive signal and went through a switch into the path of a high-speed Amtrak train. The engineer and conductor of the Conrail train admitted smoking marijuana immediately prior to the accident.

Drug and alcohol abuse in the railroad industry is not limited to the United States. It also occurs in other countries, as evidenced by a 1987 Canadian survey commissioned by a Canadian Task Force on the Control of Drug and Alcohol Abuse in the Railway Industry. In that survey, 1,000 randomly-selected Canadian railway workers, including train employees, were interviewed by telephone. The survey revealed, among other things, that 20 percent of those surveyed had come to work feeling the effects of alcohol and nine percent felt that their use of alcohol had at some time compromised job safety. In addition, 2.5 percent admitted to using illegal drugs during their shift. As the following passage from a recent Canadian arbitration award involving CN illustrates, drug and alcohol abuse problems continue to exist in Canada:

> As related in the submission of the employer's counsel, CN has extensive experience in drug and alcohol testing over the past decade, including circumstances of hiring, promotion, reasonable cause and post accident testing. Its data confirm a relatively high incidence of positive test results across Canada, exceeding ten per cent over all categories of testing in Western Canada. While positive drug tests obviously do not confirm that individuals in the railway industry have necessarily used illegal drugs while at work, a substantial number of awards of the Canadian Railway Office of Arbitration provide a well-documented record of cases which reveal the unfortunate willingness of some employees to have drugs or alcohol in their possession while at work, to use them while at work, or to report for work under their influence. * * *

In the Matter of an Arbitration Between Canadian National Railway Company and National Automobile, Aerospace, Transportation and General Workers Union of Canada (Union) and Canadian Council of Railway Operating Unions (Intervener), Re: the Company's Drug and Alcohol Policy at 123–24, Arbitrator Michel G. Picher (July 18, 2000). The drug and alcohol abuse problem in Canada is relevant to the current problem posed by FRFB employees who are performing train or dispatching service in the United States and helps demonstrate the need for more comprehensive drug and alcohol testing of such employees.

III. Congress Has Determined That Comprehensive Alcohol and Drug Testing (Including Random Testing) Is Needed in the Railroad Industry; FRA's Regulations on Control of Alcohol and Drug Use (49 CFR Part 219) Require Such Comprehensive Testing for Safety-Sensitive Employees of United States Railroads

In 1991, the many alcohol- and drug-related railroad accidents caused Congress to require FRA to expand its existing comprehensive drug and alcohol program (and to strengthen FRA's 1988 regulations requiring random drug testing) because Federal regulations and the industry's own rule on drug and alcohol usage had not proven to be totally effective.[2] Congress determined that alcohol abuse and illegal drug use posed significant dangers to the safety of railroad operations, and mandated DOT to establish regulations to eliminate the abuse of alcohol and use of illegal drugs (whether on or off duty), by individuals involved in railroad operations. In passing the Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102–143 (Omnibus Act), Congress specifically found that—

(1) Alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

[2] The railroad industry has long had in place a common rule (Rule G) prohibiting employees from using, possessing, or being under the influence of intoxicants or other drugs while on duty or subject to duty. Rule G can be tracked back to at least 1849.

(2) Millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses and depend on the operators of aircraft, trains, trucks, and buses to perform in a safe and responsible manner;

(3) The greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs (whether on duty or off duty), by those individuals who are involved in the operation of aircraft, trains, trucks, and buses;

(4) The use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) The testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, especially random testing;

(6) Adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right to privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) Rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

49 U.S.C. app. 1434 note.

The Omnibus Act, as subsequently recodified in 1994 and amended in 1995, requires the Secretary of Transportation to issue regulations relating to alcohol and drug use in railroad operations (49 U.S.C. 20140, ''section 20140''), aviation (49 U.S.C. 45101–45106), motor carriers (49 U.S.C. 31306), and mass transportation (49 U.S.C. 5331). Pub. L. No. 103–272 (1994); Pub. L. No. 104–59 (1995). Section 20140(b) provides that—* * *

(b) General.—(1) In the interest of safety, the Secretary of Transportation shall prescribe regulations and issue orders, . . . related to alcohol and controlled substances use in railroad operations. The regulations shall establish a program requiring—

(A) A railroad carrier to conduct preemployment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of a controlled substance in violation of law or United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of alcohol in violation of law or a United States Government regulation; and

(B) When the Secretary considers it appropriate, disqualification for an established period of time or dismissal of any employee found—

(i) To have used or been impaired by alcohol while on duty; or

(ii) To have used a controlled substance, whether on or not on duty, except as allowed for medical purposes by law or a regulation or order under this chapter.

(2) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations and issue orders requiring railroad carriers to conduct periodic recurring testing of railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a Government regulation.

In establishing these requirements, the Secretary is to act consistent with the international obligations of the United States, and to take foreign countries' laws and regulations into account. 49 U.S.C. 20140(e). Part 219 implements the requirements of the Omnibus Act.

In general, FRA's regulation on the control of alcohol and drug use (49 CFR part 219) currently applies to all railroads except a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation or a rapid transit operation in an urban area that is not connected to the general railroad system of transportation. However, part 219 currently exempts certain operations by foreign railroads and certain small railroads from certain subparts. As discussed later in this notice, FRA proposes to narrow the scope of most of these exemption provisions.

Under part 219, dispatcher and train employees of a domestic railroad that perform their duties in the United States are generally subject to random, reasonable suspicion, reasonable cause, return-to-duty, follow-up, and post-accident drug and alcohol testing, as well as pre-employment testing for drugs.[3] *See* subparts B, C, D, F, and G of part 219. Post-accident testing is required for a dispatcher or train employee who is directly and contemporaneously involved in the circumstances of any train accident meeting FRA testing thresholds. *See* subpart C. A dispatcher or train employee found to have violated 219.101 or 219.102 of FRA's drug and alcohol rules is required to be immediately removed from covered service, and the railroad must follow specified procedures, including rehabilitation and return-to-duty and follow-up testing requirements, before returning the dispatcher or train employee to covered service. A dispatcher or train employee who refuses to cooperate with providing a required sample is required to be removed from covered service for a nine-month period and to complete a rehabilitation program. *See* subpart B. Additionally, employers of such dispatchers and train crews operating in the United States generally must provide self-referral and co-worker reporting (self-policing) programs for their employees (subpart E), submit random alcohol and drug testing plans for approval by FRA (subpart G), conduct random testing under part 219 and DOT procedures found in 49 CFR part 40 (part 40) (subpart H), submit annual reports (subpart I), and maintain program records (subpart J).[4] The reports and records required by part 219, especially subparts H through J are necessary for audit purposes in order to demonstrate the employer's compliance with part 219.

FRA's broad-based, multi-component alcohol and drug program has reduced alcohol and drug abuse in the railroad industry (the original regulations were implemented in 1986, and random alcohol testing began in 1994).

- In 1987, testing for cause conducted under FRA and railroad programs resulted in a 4.0 percent positive rate for alcohol and a 6.9 percent positive rate for drugs. These rates have declined each year, with the 1998 testing for cause resulting in a 0.36 percent positive rate for alcohol and a 0.95 percent rate for drugs.
- Random drug testing began in 1989. The first full year's data for 1990 indicated a 1.04 percent rate, declining in 1995 to a 0.93 percent rate, and to a 0.77 percent rate in 1998.
- Random alcohol testing began in 1994, with the first full year's data for 1995 resulting in a 0.42 percent rate, which has declined each year to a 0.003 percent rate for 1998.

FRA post-accident testing data provide perhaps the most stark and compelling proof of the decline in alcohol and drug abuse in the railroad industry. In its post-accident testing program, in which testing is triggered only by significant accidents, FRA may use lower drug detection levels (cutoffs) and test for more substances than those tested for in other types of FRA testing. Post-accident testing data are the most scrutinized because FRA reviews each testing event, and tests each specimen in a designated contract laboratory, which FRA inspects quarterly. Furthermore, because the program has been in effect since 1986, post-accident testing data provide the longest trend line.

[3] Pre-employment testing for alcohol, unlike pre-employment testing for drugs, is authorized but not required (see § 219.502)

[4] For example, Subpart I requires larger railroads to summarize and submit the results of their alcohol and drug misuse programs annually to FRA for review.

An analysis of the post-accident testing data in the chart below demonstrates how positive test results have dramatically declined since FRA's program started. In 1987, the first year of the program, 42 employees produced a positive specimen, resulting in a post-accident positive rate of 0.4 percent for alcohol and 5.1 percent for drugs; by 1998 only four employees produced a positive specimen, resulting in positive rates of 0.0 percent for alcohol and 2.6 percent for drugs.

As shown in the post-accident testing chart, in each of the fields—''Qualifying Events,'' ''Employees Tested,'' and ''Employees Positive . . .''—FRA has achieved a desired reduction, despite a significant increase in rail traffic. The deterrent effect of random drug testing, which was implemented in 1988–1989, most certainly influenced the dramatic reduction in post-accident positives from 41 in 1988 to only 17 in 1990. Additionally, in the eight years from 1987 through 1994, there were 20 post-accident alcohol positives, but only two post-accident alcohol positives in the succeeding four years after implementation of random alcohol testing in 1994. Although some refinement of regulatory requirements over the years has reduced the class of qualifying events (damages criteria for two of the qualifying events have been increased), the remaining events are those for which higher positive rates would be expected due to a higher component of likely human factor involvement.

FRA is aware that many factors have contributed to these results and probably influenced movement in both directions. The number of employees tested has decreased due to fewer qualifying events and crew consist reductions. For Federal workplace detection programs such as FRA's (other than FRA post-accident testing under subpart C), Health and Human Services (HHS) has reduced the detection cut-off level for marijuana metabolites and has increased the detection levels for opiates. Another factor likely to have contributed to higher industry positive rates is the constant improvement in railroad random testing programs. Nonetheless, testing data remain the best indicator of the success that the comprehensive programs mandated by FRA have had in significantly reducing alcohol and drug abuse in the railroad industry.

FRA POST-ACCIDENT TOXICOLOGICAL TESTING RESULTS (1987–1998)

Year	Qualifying events	Employees tested	Employees positive one/more substances [number (A=alcohol; D=drug)]
1987	179	770	42 (3A–39D)
1988	178	682	41 (3A–38D)
1989	161	607	24 (6A–18D)
1990	149	524	17 (1A–16D)
1991	157	552	8 (2A–6D)
1992	109	332	7 (1A–6D)
1993	128	403	8 (2A–6D)
1994	115	294	7 (2A–5D)
1995	82	225	2 (0A–2D)
1996	73	197	1 (0A–1D)
1997	86	240	3 (2A–1D)
1998	68	153	4 (0A–4D)

Note on this chart, concerning 49 CFR 219, subpart C—Post-Accident Toxicological Testing:

The positives reflected in the chart indicate the presence of drugs or alcohol in a covered employee during the event. A positive result does not necessarily indicate a causal relationship with the accident. Causal determinations are made only after a thorough review of all factors that may have contributed to the accident.

With certain stated exceptions, post-accident toxicological tests are required to be conducted for the following events occurring in the United States:

1. Major Train Accident (involving damage exceeding the current FRA reporting threshold ($6,600 in 1998)) involving:

(a) a fatality;

(b) a release of hazardous material lading from railroad equipment resulting in either an evacuation or a reportable injury; or

(c) damage to railroad property of $1,000,000 or more.

2. Impact Accident (as defined in § 219.5 involving damage exceeding the FRA reporting threshold) involving:

(a) a reportable injury; or

(b) damage to railroad property of $150,000 or more.

3. Fatal Train Incident: fatality to any on-duty railroad employee involving movement of on-track equipment with damage not exceeding the reporting threshold.

4. Passenger Train Accident: passenger train involved in an accident that exceeds the reporting threshold and results in an injury reportable to FRA under 49 CFR part 225.

See 49 CFR 219.201(a). Rail/highway grade crossing accidents and accidents wholly resulting from natural causes (e.g., tornado), vandalism, or trespassing are exempt from FRA post-accident testing. *See* 49 CFR 219.201(b). For a major train accident, all train crewmembers must be tested, but any other covered employees (e.g., dispatchers, signalmen) determined not to have had a role in the cause or severity of the accident are not to be tested. *See* 49 CFR 219.201(c)(2).

IV. Currently, a Foreign Railroad's Foreign-Based (FRFB) Employees Who Perform Service Covered by the Hours of Service Laws in the United States Are Exempted by § 219.3(c) from Subparts E (Identification of Troubled Employees), F (Pre-employment Testing), and G (Random Testing)

A. FRA's 1992 Advance Notice of Proposed Rulemaking and 1994 Issuance of Current Exemption at § 219.3(c)

Foreign railroads (railroads incorporated in a place outside the United States) have been subject to portions of FRA's regulations on the control of alcohol and drug use (part 219) since 1986. 51 FR 3973, Jan. 31, 1986. In 1992, FRA published an advance notice of proposed rulemaking (ANPRM) asking for comment on the international application of the additional areas of drug and alcohol testing discussed in the Omnibus Act.

The ANPRM discussed departmental issues because the Federal Aviation Administration (FAA) and the Federal Highway Administration (FHWA, whose Office of Motor Carrier Safety is now the Federal Motor Carrier Safety Administration (FMCSA)), concurrently published separate ANPRMs on international application of the Omnibus Act.

As noted in FRA's ANPRM, section 4 of the Omnibus Act amended then section 202(r)(1) of the Federal Railroad Safety Act of 1970, as well as sections of the Federal Aviation Act and the Commercial Motor Vehicle Safety Act of 1988. 49 U.S.C. 20140, superseding 45 U.S.C. 432(r). Addressing concerns of all three modal administrations, the ANPRM stated that:

> Under these similar provisions, FAA, FRA and FHWA have the authority and obligation to require drug and alcohol tests for safety sensitive employees of foreign employers. The FAA provisions specifically extend coverage to foreign air carriers, and the FHWA and FRA provisions cover motor carriers and railroads, respectively, which definitions include employers based in this country or a foreign country. Moreover, the legal authority extends to all kinds of testing required by the Act: Reasonable suspicion, post-accident, preemployment, and random (subject to U.S. international obligations).
>
> It is the Department's policy to carry out the Act's requirements using a territorial jurisdiction approach. That is, the Department interprets its statutory authority and obligation for drug and alcohol testing to apply to foreign employers who conduct operations in the United States, with respect to those operations. This does not mean that all operations of such a transportation employer would be subject to the rules. For example, a foreign employer's operations within its own country would not be subject to these rules. Following the same policy, only those employees of a foreign transportation employer who perform safety-sensitive functions in operations within the U.S. would be subject to testing.
>
> For each of the three industries involved, the Act requires the Department to act consistent with the international obligations of the U.S. and, to take foreign countries' laws and regulations into account.

(57 FR 59606, Dec. 15, 1992).

To implement Congress' intent, FRA proposed several rules (which later became final rules) and asked in its ANPRM for comments on whether FRA should extend the reach of all its substance abuse rules to FRFB employees who perform, or are assigned to perform, train service or other service covered by the hours of service laws (signal service or dispatching service) in the United States. The ANPRM also asked for information on any treaty obligations or principles of international law that could affect FRA's implementation of the Omnibus Act. Questions posed in the ANPRM are discussed in Section VIII of this preamble.

FRA received no comments in response to this ANPRM. Based on this lack of response and the perceived lack of interest in these issues that it implied, FRA decided not to proceed with a separate rulemaking on extraterritorial application. Accordingly, in 1994, FRA withdrew the ANPRM and instead, in its final rule implementing the Omnibus Act, codified at § 219.3(c) the scope of extraterritorial application already in effect. 59 FR 7448, 59 FR 7482; Feb.15, 1994.

B. Scope of Existing Exemption at § 219.3(c)

Section 219.3(a) makes all of the requirements of part 219 applicable to railroads that operate on the general system and to commuter railroads unless these railroads are exempted by paragraphs (b) (dealing with small railroads) or (c). Paragraph (c) explicitly exempts foreign railroads from only subparts E through G, therefore leaving them subject to subparts A, B, C, D, H, I, and J. Section 219.3(c) reads as follows:

> Subparts E [self-referral and co-worker report policy], F [pre-employment testing] and G [random testing] do not apply to operations of a foreign railroad conducted by covered service employees whose primary place of service (''home terminal'') for rail transportation services is located outside the United States. Such operations and employees are subject to subparts A, B, C, and D when operating in United States territory.

The existing paragraph (c) exemption from subparts E through G applies to ''covered service employees''—train crews, dispatchers, and signal maintainers subject to the hours of service laws at 49 U.S.C. ch. 21101—who are employed by a foreign railroad and whose primary reporting point is outside the United States. *See*, e.g., 57 FR 59606 (Dec. 15, 1992); 59 FR 7449–7450 (Feb. 15, 1994); and Section X of the preamble, ''Section-by-Section Analysis,'' *infra.* The following categories of employees do not fall within the exemption and are, therefore, subject to part 219 in its entirety, unless their employing railroad qualifies as a small railroad under § 219.3(b): (1) An employee of a United States railroad whose primary reporting point is outside the United States but who enters the United States to perform, or is assigned to perform, service subject to the hours of service laws; and (2) an employee of a foreign or domestic railroad whose primary reporting point is in the United States and who performs, or is assigned to perform, service subject to the hours of service laws.

V. FRA Is Proposing To Narrow the Scope of § 219.3(c) and To Apply All of Part 219 to FRFB Employees Who Perform Train Service or Dispatching Service in the United States, and Pre-employment Testing to All Individuals Seeking To Perform Such Service for the First Time, Unless Their Employer Would Be Exempt Under Proposed § 219.3(b) (Dealing with Small Railroads)

Recent trends in the organization of North American railroads and the expansion of trade among the United States, Mexico, and Canada under such treaties as the North American Free Trade Agreement, together have resulted in a growth, and potential for further growth, in multinational railroad operations. *See* the preamble to FRA's Interim Final Rule (49 CFR part 241) published in today's edition of the **Federal Register** for a discussion of organizational trends, current and potential level of cross-border train dispatching operations, and other issues related to this NPRM. The Interim Final Rule points out the increasing prospect that, if unrestrained, foreign railroads will resort to the use of foreign-based dispatchers who are not subject to the same safety laws and regulations as United States-based dispatchers, to control rail operations in the United States.

Because of the existing level of cross-border train operations involving FRFB train crews, the potential for increase in such operations, and the increasing risk of foreign railroads using foreign-based dispatchers to control rail operation in the United States, and the resulting increased safety risk posed by such actions, FRA now proposes to narrow the scope of all three provisions of § 219.3 that create exemptions from portions of part 219.[5] With regard to the most important of these exemptions, § 219.3(c), FRA would limit the exemption from subparts E, F, and G to FRFB signal service employees, who are currently few in number. FRA would apply all of part 219 to FRFB train and dispatching service employees, including pre-employment testing under subpart F for all individuals seeking to serve in such capacity, unless their

[5] In the proposed rule, FRA repeats verbatim the existing exemption provided by § 219.3(b)(1) from all of part 219, which is for a railroad whose operations are confined to an installation that is not part of the general railroad system of transportation.

employer qualifies as a small railroad under proposed § 219.3(b).

Furthermore, FRA proposes to reduce the scope of the two exemptions at §§ 219.3(b)(2) and 219.3(b)(3) to make sure that they provide relief only to relatively small railroads, as originally intended, and that a railroad's operations outside the United States are taken into account in determining the size of the railroad for purposes of those exemptions. Currently, § 219.3(b)(2) provides relief from subparts D, E, F, and G for a railroad that both (1) does not operate on the track of another railroad except for purposes of interchange and (2) has 15 or fewer employees whose duties are covered by the hours of service laws. The other exemption, at § 219.3(b)(3), provides relief from subpart I (annual reports) for a railroad with fewer than 400,000 manhours. (See Section X of the preamble, ''Section-by-Section Analysis,'' *infra*.)

In the context of § 219.3(c), and omitting the special case involving pre-employment testing, the term ''FRFB train employee'' or ''FRFB dispatching service employee'' basically refers to an individual who meets all of the following three criteria. First, the individual must be employed by a foreign railroad or by a contractor to a foreign railroad. If the individual is employed by a United States railroad (a railroad incorporated in the United States) or a contractor to a United States railroad, the exemption in § 219.3(c) from subparts E through G does not apply. Second, the individual's primary place of service for rail transportation services (''home terminal'') must be located outside the United States. If the individual's home terminal is inside the United States, § 219.3(c) does not apply. Third, the individual must either—

(a) In the case of a train service employee, be engaged in or connected with the movement of a train, including a hostler (49 U.S.C. 21101(5)), or

(b) In the case of a dispatching service employee, report, transmit, receive, or deliver orders related to or affecting train movements (49 U.S.C. 21101(2))—in the United States during a duty tour or be assigned to perform such train service or dispatching service in the United States during a duty tour.

As previously noted, train and dispatching service in the United States conducted by FRFB employees who perform, or are assigned to perform, such service in the United States is already subject to subparts A (general requirements and definitions), B (prohibitions), C (post-accident toxicological testing), D (testing for cause), H (testing procedures), I (annual report), and J (recordkeeping procedures), unless their employer falls within an exemption at § 219.3(b).

FRA proposes to amend the exemption at § 219.3(c) to limit it to FRFB signal maintainers. Train operations and dispatching service in the United States performed by FRFB train or dispatching service employees, who are currently subject to all of part 219 other than subparts E (self-referral and co-worker report programs), F (pre-employment drug tests), and G (random testing), would become subject to these subparts as well. It should be noted that even though, broadly speaking, subparts H, I, and J currently apply to operations in the United States by FRFB train crews and dispatching service employees, some specific requirements in subparts H, I, and J do not by their terms apply to these operations because the requirements are partly or wholly triggered only if the employing railroad is required to do pre-employment or random testing. *See* the annual reporting requirements in subpart I at, e.g., §§ 219.801(d)(3)–(5) and 219.803(e)(3)–(5), for information by type of testing; § 219.803(d)(6), for number of persons denied a position as a covered employee following a pre-employment drug test; and § 219.801(d)(12), for number of covered employees who refused to submit to a random alcohol test required by part 219. By making pre-employment and random testing requirements applicable to such operations, the proposed amendments would trigger these additional reporting requirements in subpart I, increase the scope of the foreign railroad's activities subject to subpart H and 49 CFR part 40 testing safeguards and procedures, and require the keeping of additional records under subpart J.

To comply with these proposed requirements, foreign railroads that use FRFB train or dispatching service employees to conduct train operations in the United States would have to conduct pre-employment drug tests (subpart F) and submit random alcohol and drug testing plans for approval by FRA (subpart G) for these employees. To meet the same requirements already applicable to railroads with United States-based train and dispatching service employees and to United States railroads with foreign-based train and dispatching service employees, FRA would also require foreign railroads employing or contracting for the services of FRFB train or dispatching service employees operating in the United States to comply with subpart E by providing self-referral and co-worker report programs for such operations and employees. Finally, as indicated earlier, a foreign railroad's responsibilities to comply with subparts H, I, and J with respect to such operations and employees would become more complex because subpart H would also govern random and pre-employment testing, subpart I would require additional specific information on random or pre-employment tests if random or pre-employment testing is required, and subpart J would call for certain records for random and pre-employment tests. FRA's intent is to ensure that, unless exempted by proposed § 219.3(b), part 219 is fully applicable to all employees who perform, or are assigned to perform, train or dispatching service in the United States subject to the hours of service laws at 49 U.S.C. ch. 211, whether they are foreign- or domestically-based and whether employed by a foreign or a domestic railroad.

VI. Whether and to What Extent Extraterritorial Dispatchers or FRFB or Extraterritorial Signal Maintainers Should Be Covered by Part 219

FRA's Interim Final Rule, also published in this edition of the **Federal Register**, generally requires dispatchers controlling United States railroad operations to be located in the United States; by way of exception, the rule (1) conditionally permits extraterritorial dispatching in an emergency, (2) permits continued extraterritorial dispatching of very limited track segments in the United States that were normally being so dispatched in December 1999, and (3) conditionally permits extraterritorial dispatching of certain other fringe border operations. The Interim Final Rule invites comments on whether FRA should adopt an alternative regulatory scheme under which extraterritorial dispatching would be permitted; under this alternative scheme extraterritorial dispatchers may be subject to part 219. As discussed in the Interim Final Rule, an extraterritorial dispatcher of railroad operations in the United States, who is not a ''covered employee'' and therefore generally outside the scope of application of part 219, could compromise safety in the United States if impaired by drugs or alcohol. Because of the *de minimis* nature of the exceptions to the prohibition against extraterritorial dispatching, FRA does not propose to apply any or all of part 219 to the few employees permitted to conduct extraterritorial dispatching under the Interim Final Rule based on that service. FRA invites comment on this issue.

FRA's safety analysis of extraterritorial dispatchers parallels its safety analysis of extraterritorial and FRFB signal maintainers. An impaired extraterritorial signal maintainer responsible for signals controlling rail operations in the United States could adversely impact safety in the United States without ever physically entering United States territory. An extraterritorial signal maintainer, who by definition is not a ''covered employee'' and therefore who is normally outside the scope of application of part 219, or an FRFB signal maintainer, who is exempt from subparts E, F, and G under § 219.3(c), could endanger railroad operations in the United States. For this reason, FRA considered proposing an expanded application of part 219 to cover such extraterritorial or FRFB signal maintainers. It appears that this activity is also *de minimis.* To FRA's knowledge, no FRFB signal maintainer comes into the United States to maintain a railroad signal system on a regular basis, and only a few FRFB signal maintainers do so on an occasional basis. This infrequent performance of signal service in the United States by FRFB signal maintainers occurs in the areas of Buffalo and Niagara Falls, New York; Detroit, Michigan; and Sarnia, Michigan. After examining the *de minimis* impact of such extraterritorial or FRFB signal maintainers on rail operations in the United States, FRA has decided that such a proposal is not necessary at this time. However, commenters are invited to address whether any or all of part 219 should be applied to extraterritorial signal maintainers and whether subparts E, F, and G should be applied to FRFB signal maintainers who perform signal service in the United States. (Again, it should be noted that signal maintainers based in the United States, whether employed by United States or foreign railroads, remain, as always, fully subject to part 219 with respect to their covered service (which by definition is in the United States) unless exempt under a provision of existing § 219.3(b). Likewise, signal maintainers employed by United States railroads but based outside the United States remain subject to part 219 in its entirety with respect to their covered service in the United States unless otherwise exempt.)

VII. Whether To Broaden the Application of Other Part 219 Requirements

The preceding portions of this preamble discuss the issue of whether and how to broaden the application of principally random testing and pre-employment testing and of how to narrow three exemption provisions in § 219.3. In this portion of the preamble, FRA solicits comment on whether to broaden the application of other part 219 requirements to reach operations and employees outside the United States.

For example, FRA invites comment on whether it should expand the basis for requiring post-accident testing under subpart C and testing for cause under subpart D to events that occur outside the United States and, if so, what those events should include. Currently, under part 219, FRA limits qualifying events for post-accident and ''for cause'' testing to those within the borders of the United States. Should FRA expand post-accident testing to include FRFB train employees who are involved in an otherwise qualifying event while in transit to or from the United States?

If FRA decides against such an expansion, the agency will likely amend—

- § 219.201 to make explicit that events for which post-accident toxicological testing under subpart C is required are limited to those within the borders of the United States; and
- §§ 219.300 and 219.301 to clarify that events for which reasonable suspicion testing is mandatory and reasonable cause testing is authorized are limited to those that occur within the borders of the United States.

VIII. Implementation Issues Raised by Extraterritorial Application of Part 219

In its 1992 ANPRM, FRA raised for comment several practical issues associated with the extraterritorial application of part 219, including:

- How would foreign employers ensure that an employee who had tested positive did not engage in operations in the United States until after his or her reinstatement requirements had been met?
- How would FRA monitor or enforce compliance outside the United States?

As in its 1992 ANPRM, FRA seeks comment on potential implementation issues. FAA and FMCSA, the other DOT modes covered by the Omnibus Act, have taken divergent approaches to extraterritorial application of their regulations. (The Federal Transit Administration has not addressed this issue since to date there are no cross-border transit operations affecting United States transit safety.) Citing work in progress by the International Civil Aviation Organization, FAA withdrew a proposed rulemaking that would have required foreign air carriers to establish alcohol and drug testing programs for their employees performing safety-sensitive aviation functions within the United States (65 FR 2079, Jan. 13, 2000).

FMCSA, which, like FRA, does not have an international treaty organization for its regulated industry, adopted an approach similar to what FRA is proposing. FMCSA has applied all of 49 CFR part 382 (FMCSA's equivalent to part 219) to persons and employers of such persons who operate a commercial motor vehicle in commerce in the United States, including foreign-domiciled employees. See 49 CFR 382.115. In the preamble to its final rule (60 FR 49321, 49323, Sept. 22, 1995), FMCSA's predecessor agency, the FHWA, stated that ''[a]ll drivers operating in the United States are to be subject to controlled substances and alcohol testing, regardless of domicile. The safety concerns which led to the Omnibus Act pertain equally to United States and foreign-based drivers.''

FRA is now reconsidering many of the issues first raised in its ANPRM about the implementation of part 219 testing in foreign countries, and invites comments on extraterritorial application issues. FRA post-accident toxicological testing, unlike other testing under part 219, does not parallel part 40 procedures. *See* part 219, subpart C. In its investigation of a qualifying accident, FRA may require testing for different substances (e.g., carbon monoxide in the remains of a deceased employee) or testing at lower levels of detection than those required under part 40. FRA therefore contracts out all post-accident testing to an HHS-certified special laboratory that meets its detailed testing specifications (currently NWT Inc. in Salt Lake City, Utah). For example, if based on comments received on this NPRM, FRA decides to apply part 219 to extraterritorial signal maintainers and an extraterritorial signal maintainer could have contributed to a qualifying accident on United States soil, is there a way to assure that the employing railroad will ship the maintainer's specimens to FRA's designated post-accident laboratory? Although several Canadian laboratories have been deemed equivalent by HHS, post-accident testing requires testing specifications beyond those of part 40.

Furthermore, clearance through customs and international mail may delay shipment of body fluid and tissue specimens, and may also cause problems with the timely transmission of specimens and their accompanying paperwork. FRA also seeks comment on whether employing railroads in foreign countries would have difficulty obtaining and using evidential breath

testing devices that are on the National Highway Traffic Safety Administration Conforming Products List, as required for part 40 alcohol testing.

IX. In Conclusion, FRA Believes That, Unless Exempted by Proposed § 219.3(b), All of Part 219 Should Apply to FRFB Employees Who Perform Train Service or Dispatching Service in the United States and Pre-Employment Testing Should Apply to Applicants To Perform Such Service

Train and dispatching service employees operating in the United States whose judgment and motor skills are impaired by the use of alcohol or drugs pose a significant safety risk to themselves and others. Significant portions of FRA's highly successful, broad-based, multi-component part 219 alcohol and drug program, including random drug and alcohol testing, do not currently apply to FRFB train and dispatching service employees operating in the United States. If such employees are impaired by alcohol or drugs, they can jeopardize the safety of United States railroad operations. Since train employees do not experience the deterrence provided by the timely oversight of a supervisor because of their normal, independent working conditions, random testing is especially necessary to provide the necessary deterrent effect. With the existing levels of cross-border train operations and the potential for increases in such operations, FRA believes that it is necessary to narrow the scope of three exemptions from part 219 and (absent exemption by proposed 219.3(b)) to apply all of its part 219 program to FRFB train and dispatching service employees operating in the United States, and to apply pre-employment testing to individuals seeking to perform such service. The proposed amendments to part 219 (together with the Interim Final Rule on extraterritorial dispatching published elsewhere in this issue), will help ensure the safety of railroad operations in the United States.

X. Section-by-Section Analysis

Introduction

This section-by-section analysis is intended to explain the provisions of the proposed rule. A number of these provisions and issues related to them have been addressed earlier in this preamble. Accordingly, the preceding discussions should be considered in conjunction with those below and will be referred to as appropriate.

General Provisions (Subpart A)

Section 219.3 Application

Paragraph (a) contains a general statement of the scope of applicability of part 219, and paragraphs (b) and (c) contain exceptions to the general statement of applicability. The three exemptions in paragraph (b) are available to both domestic and foreign railroads, which is noted in the new heading for the paragraph. The exemption in paragraph (c) is available only to foreign railroads, also noted in the new heading for paragraph (c).

Paragraph (a) is unchanged except to add the heading ''General'' and to make explicit that the commuter railroads to which part 219 applies must operate in the United States. Paragraph (a) means that part 219 applies to each railroad that operates on the general railroad system of transportation and each railroad providing commuter or other short-haul service as described in the statutory definition of ''railroad,'' unless the railroad falls into an exception stated in paragraph (b) or (c). The terms ''railroad'' and ''general railroad system of transportation'' are defined in § 219.5. Intercity passenger operations and commuter operations in the United States are covered even if not physically connected to other portions of the general railroad system. See discussion below.

Paragraph (b)(1), which uses standardized regulatory language, means that railroads whose entire operations are conducted on track within an installation that is outside of the general railroad system of transportation in the United States (in this paragraph, ''general system'' or ''general railroad system'') are not covered by this part. Tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system would, therefore, not be subject to this part. The word ''installation'' is intended to convey the meaning of physical (and not just operational) separateness from the general system. A railroad that operates only within a distinct enclave that is connected to the general system only for the purposes of receiving or offering its own shipments is within an installation. Examples of such installations are chemical and manufacturing plants, most tourist railroads, mining railroads, and military bases. However, a rail operation conducted over the general system in a block of time during which the general system railroad is not operating is not within an installation and, accordingly, not outside of the general system merely because of the operational separation.

Read together, proposed *paragraphs (a) and (b)(1)* mean that all of part 219 applies to all railroads that operate on the general railroad system of transportation or are commuter or intercity passenger railroads, except those exempted from one or more subparts of part 219 by proposed paragraphs (b)(2), (b)(3), or (c).

Paragraph (b)(2). Existing paragraph (b)(2) exempts from subparts D (testing for cause), E (self-referral and co-worker report programs), F (pre-employment testing), and G (random testing) a railroad that meets both of the following criteria: the railroad must (1) utilize 15 or fewer employees covered by the hours of service laws and (2) not operate on the tracks of another railroad or engage in other joint operations with another railroad except for purposes of interchange.

Under proposed paragraph (b)(2), the second criterion remains the same, but the first criterion changes. As proposed, a railroad (including, for example, a foreign railroad that utilizes FRFB employees to perform train operations in the United States) would qualify as a small entity exempt from subparts D, E, F, and G of part 219 upon satisfaction of the following two conditions. First, the *total* number of its employees covered by the hours of service laws (as train employees, dispatching service employees, or signal employees), and employees who would be covered by the hours of service laws if their services were performed in the United States, would have to be 15 or fewer. Second, as is the case currently, the railroad would also be obliged not to operate on the tracks of another railroad or otherwise engage in joint operations in the United States except in order to perform interchange.

The following example, the first of a series, illustrates the interpretation of proposed paragraph (b)(2):

- *Example 1:* Railroad XYZ employs 10 foreign-based individuals who perform service in the United States that is covered by the hours of service laws and 120 foreign-based individuals who would be covered by the hours of service laws if their services were performed in the United States. Railroad XYZ would not qualify under proposed paragraph (b)(2)(i) since it employs a total of 130 individuals who are, or would be, subject to the hours of service laws.

By exempting only railroads *which in their entirety, worldwide*, comprise 15 or fewer employees who are or would be subject to the hours of service laws, FRA would effectuate the original intent of this subsection, which was to lessen the economic impact of part 219 on those small entities that have both limited

resources and a minimal impact on safety.

Although under proposed paragraph (b)(2) FRA would partially determine the applicability of subparts D, E, F, and G to a railroad based on the total number of its employees who are, or would be, covered by the hours of service laws, a railroad that is exempted only under proposed paragraph (b)(2) from subparts D, E, F, and G would have to comply with all the other requirements of part 219 (subparts A, B, C, D, H, I, and J) generally only with respect to those of its employees who are ''covered employees'' within the meaning of the substantive provisions of part 219. In Example 1, Railroad XYZ with 10 foreign-based employees covered by the hours of service laws and 120 foreign-based employees who would be covered by the hours of service laws if their services were performed in the United States, would not be exempt under proposed paragraph (b)(2). The question remains whether Railroad XYZ is exempt from any subpart of part 219 under proposed paragraph (c) of § 219.3. The following examples illustrate the relationship between the exemption in proposed paragraph (b)(2) and the exemption in proposed paragraph (c).

• *Example 2:* If Railroad XYZ is a domestic railroad (incorporated in the United States) that just happens to have only foreign-based employees, then the proposed exemption at paragraph (c) would not apply because paragraph (c) exempts from subparts E, F, and G only operations by a foreign railroad, not a domestic railroad. As a result, this domestic railroad would be required to conduct random testing on its 10 foreign-based employees who perform covered service in the United States.[6] Broadly speaking, these 10 employees would also be the only ones subject to part 219's prohibitions, general conditions, and other testing and reporting requirements. (However, for example, if § 219.ll(g) requires training of a supervisor of a covered employee, then the railroad would have to train the supervisor even if the supervisor is not a covered employee.)

• *Example 3:* If Railroad XYZ is a foreign railroad (incorporated outside the United States) and all ten of its foreign-based employees who perform covered service in the United States perform train or dispatching service in the United States, then proposed paragraph (c) would not exempt them either. All ten FRFB train or dispatching service employees would be subject to random testing.

• *Example 4:* However, if some of foreign Railroad XYZ's ten foreign-based employees instead perform only signal service in the United States, then those employees would be subject to the exemption at proposed paragraph (c) and, therefore, would not be subject to random testing.

Paragraph (b)(3). Existing paragraph (b)(3) reads as follows, ''Subpart I does not apply to a railroad that has fewer than 400,000 total manhours.'' Proposed paragraph (b)(3) would make two basic changes to that provision. First, it would replace the term ''manhours'' with the term ''employee hours'' to make the provision gender-neutral. Second, the proposed paragraph would change and clarify the way in which employee hours are to be calculated, in part by defining the term ''employee'' as used in that subsection. Under the proposal FRA would look to a railroad's *total* number of employee hours worked worldwide in a calendar year, not just those worked in the United States, to determine whether the railroad would be required to file an annual Management Information System (MIS) report under subpart I. For a railroad to be exempt from MIS reporting, the number of hours worked by *all* of the railroad's employees regardless of their location or occupation, not just those employees performing train operations or other covered service in the United States, would have to total fewer than 400,000. For purposes of proposed paragraph (b)(3), an ''employee of a railroad'' is any individual who performs a service for the railroad; the term would include, for example, people directly compensated by the railroad and people employed by a contractor to the railroad who perform a service for the railroad. Non-work time, such as holidays, sick leave, or annual leave, would be excluded from the calculation of employee hours, even though it is paid.

It should be noted that the calculation of employee hours under proposed paragraph (b)(3) differs in some respects from the calculation of employee hours for purposes of FRA's accident reporting rules at 49 CFR part 225. *See* 49 CFR 225.21(d) (regarding the Form FRA 6180.56, ''Annual Railroad Report of Manhours by State''). When reporting employee hours under the accident reporting rules, a railroad is to include only the hours of individuals who are directly compensated by a railroad, not the hours of employees of railroad contractors, and, as a general rule, to include only hours worked in the United States. *See* the FRA Guide for Preparing Accident/Incident Reports (1997 edition), Ch. 3, p. 3; Ch. 11, p. 1.) (By way of exception to the general rule for part 225 purposes, a railroad reporting under part 225 must include hours worked outside the United States in the count of employee hours only if the employee works in both the United States and in a foreign country during the same tour of duty. *Id.*)

FRA proposes to base the application of subpart I on a railroad's total number of employee hours worldwide, rather than on the railroad's total number of employee hours worked in the United States, in order to ensure FRA's ability to monitor foreign-based railroads that impact rail safety in the United States. Requiring these railroads to submit MIS reports, which provide data on the required part 219 programs and tests on the subject employees, would allow FRA to capture basic compliance data even if budgetary and logistical concerns were to impact FRA's ability to conduct inspections in foreign countries.

Paragraph (c). This paragraph would revise existing paragraph (c). Proposed paragraph (c) would limit the existing exemption for operations of a foreign railroad conducted by a covered service employee whose primary reporting point is outside the United States and who is employed by a foreign railroad to FRFB signal maintainers. The change would make an FRFB train or dispatching service employee subject to part 219 to the same extent as a train or dispatching service employee whose primary reporting point is in the United States and as a train or dispatching service employee whose primary reporting point is outside the United States and who is employed by a United States railroad (a railroad incorporated in the United States). Proposed § 219.5 would define ''foreign railroad'' as a railroad that is incorporated outside the United States. The current term (''primary place of service (''home terminal'') for rail transportation services'') would be replaced by the more generic term (''primary place of reporting'') to convey more clearly that the proposed narrower exemption applies to signal employees, whose principal reporting point is not typically called a ''home terminal.''

While the text of proposed paragraph (c) states that subparts E, F, and G do not apply to services of a foreign railroad performed by one of its employees whose principal reporting place is outside the United States and who performs signal maintenance in the United States, the note under that proposed paragraph states the positive inference that subparts A, B, C, D, H, I, and J of part 219 do apply to services in the United States performed by FRFB signal employees unless a provision of paragraph (b) provides an exemption from one or more of those subparts. (For

[6] Consistent with FRA's treatment of domestic small railroads; part 219 would prohibit a railroad from conducting random testing under part 219 authority on its 120 employees who do not operate in the United States.

example, if the foreign railroad is small enough and operationally isolated enough to come within proposed paragraph (b)(2), then none of its covered service employees (neither its train crews, nor its signal maintainers, nor its dispatchers who perform covered service in the United States) would be subject to subparts D, E, F, or G.) For clarity, the proposed rule adds subparts H, I, and J to the existing list (''subparts A, B, C, and D'') in the second sentence of paragraph (c) of those subparts applicable to individuals meeting all of the following criteria: (1) Whose principal reporting point is outside the United States, (2) who are employed by foreign railroads, and (3) who are covered signal employees, unless exempted by § 219.3(b).

As discussed above, FRA is also asking for comment on whether signal maintainers who are the counterparts of FRFB train and dispatching service employees and whether extraterritorial signal maintainers, who remain outside the United States but may affect rail operations in the United States without entering United States territory, should be treated differently from FRFB train and dispatching service employees.

Section 219.5 Definitions

The terms ''covered service'' and ''covered employee'' are closely interrelated and, therefore, their definitions are discussed together.

Covered service. FRA proposes to add this definition of a basic term used in part 219, which appeared in part 219 as originally issued in 1985 but which is no longer among the definitions. The proposed definition tracks the definition in the 1985 final rule, with the exception that FRA makes explicit that FRA continues to interpret ''covered service'' as occurring only in the United States. In this respect, no substantive change is intended. As stated in the section-by-section analysis of the 1985 final rule,

> Covered service is service subject to the Hours of Service Act. This is a practical, rather than a craft-based, definition of the persons and functions subject to the regulations. However, the employees that will most often fall within the definition of covered employee are train and engine crews, yard crews (including switchmen), hostlers, train order and block operators, dispatchers, and signalmen. These are the functions identified by the Congress as being connected with the movement of trains and requiring maximum limits on duty periods and required off-duty periods in order to ensure their fitness. 50 FR 31530 (Aug. 2, 1985).

Covered employee. The definition of this term is proposed to be revised to make clear that FRA interprets covered service as being performed only in the United States. It should be noted that the existing rule currently provides as follows:

> (6) An employee must be subject to testing only while on duty. Only employees who perform covered service for the railroad are subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program must specify the extent to which, and the circumstances under which they are to be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program must provide that employees are subject to the possibility of random testing on any day they actually perform covered service.

49 CFR 219.601(b)(6) (regarding railroad random drug testing programs). The section on railroad random alcohol testing programs contains an almost identical provision. 49 CFR 219.607(b)(5). FRA will be glad to work with railroads to exercise the flexibility provided by the rule.

General railroad system of transportation. FRA proposes to add this definition to clarify that the term is limited to that part of the general railroad system of transportation that is located within the borders of the United States.

Annual Report (Subpart I)

§ 219.801 Reporting alcohol misuse prevention program results in a management information system.

§ 219.803 Reporting drug misuse prevention program results in a management information system.

First, FRA proposes to make conforming changes to §§ 219.801 and 219.803 in order to reflect the replacement of the term ''manhours'' in § 219.3(b)(3) with the gender-neutral term ''employee hours'' and to reflect the new criteria for determining which hours should be included as employee hours (*e.g.,* hours worked by a railroad's employees and contractors worldwide). See text and analysis of proposed § 219.3(b)(3). Finally, FRA would conform § 219.803 to § 219.801 by, *e.g.,* defining the calendar year.

XI. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the web site for the Docket Management System at *http://dms.dot.gov.* FRA invites comments on this regulatory evaluation.

As part of the regulatory evaluation, FRA has assessed costs and benefits expected from the adoption of the proposed rule. Canadian and Mexican railroads employing FRFB employees to perform train or dispatching service in the United States would incur, by United States standards, a seemingly low level of costs associated with extending the application of all of the part 219 requirements addressing control of alcohol and drug use to FRFB employees performing train or dispatching service in the United States.

For a twenty-year period, the Net Present Value (NPV) of the estimated quantified costs are $250,384 for Canadian railroads and $115,860 for Mexican railroads. The following table presents estimated twenty-year monetary costs associated with the distinct proposed rule modifications.

ESTIMATED 20-YEAR COSTS

[Net Present Value]

Description	Canada	Mexico
Identification of Troubled Employees	$7,883	$2,032
Pre-employment Tests	20,857	15,370
Random Alcohol and Drug Testing	166,139	49,962

ESTIMATED 20-YEAR COSTS—Continued

[Net Present Value]

Description	Canada	Mexico
Annual Report	7,373	4,256
Recordkeeping Procedures	47,758	43,162
General: Written Instructions	374	1,078
Total (rounded)	250,384	115,860

Detailed calculations of these estimates can be found in Section 7.0 of the regulatory evaluation on file at FRA in the docket for this rulemaking.

The United States Department of Transportation estimates the ''willingness to pay'' to avert a fatality to be $2.7 million. The estimated value of preventing a critical injury that is non-fatal over the next twenty years is between $532,020 and $2,058,750, depending on the year in which the injury occurs. Twenty-year costs of this NPRM would be justified if one critical injury or a combination of less severe injuries and property damages totaling $366,244 was prevented over the twenty years. FRA believes that the costs associated with the transition from the current rule to the proposed rule would be justified by safety benefits in the form of fewer accidents and related injuries, fatalities, property damage, and hazardous materials releases. FRA also believes that the safety of certain domestic rail operations would be compromised if the proposed rule is not implemented. A more detailed explanation of the benefits of this rule as well as a summary of the cost-benefit analysis can be found in Sections 9.0 and 10.0 of the regulatory evaluation on file at FRA in the docket for this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Initial Regulatory Flexibility Assessment (IRA), which assesses the small entity impact. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590.

Pursuant to section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published an interim policy that formally establishes ''small entities'' as being railroads that meet the line-haulage revenue requirements of a Class III railroad. For other entities, the same dollar limit in revenue governs whether a railroad, contractor, or other respondent is a small entity (62 FR 43024, Aug. 11, 1997).

The IRA concludes that this proposed rule would not have an economic impact on a sizable number of small entities. FRA further certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden hours
219.401/403/405—Voluntary Referral & Co-worker Report Policies.	6 railroads	6 policies	33.33 hours	200	$7,880
219.405(c)(1)—Report by a Co-worker	6 railroads	1 report	5 minutes	.08	3
219.403/405—SAP Counselor Evaluation	6 railroads	10 reports/referrals	2 hours	20	3,000
219.601(a)—Railroad Random Drug Testing Programs.	6 railroads	6 programs	1 hour	6	228
—Amendments to Programs	6 railroads	1 amendment	1 hour	1	38
219.601(b)(1)—Random Selection Proc.—Drug.	6 railroads	72 documents	4 hours	288	4,320
219.601(b)(4); 219.601(d)—Notice to Employees.	6 railroads	6 notices	10 hours	60	2,280
—Notice to Employees—Selection for Testing.	6 railroads	60 notices	1 minute	1	38
219.603(a)—Notice by Employee Asking to be Excused from Urine excuses.	200 employees	2 documented excuses.	15 minutes	.50	17
219.607(a)—Railroad Random Alcohol Testing Progs.	6 railroads	Incl. in 219.601(a)	Incl. in 219.601(a)	(1)	(1)
—Amendments	6 railroads	1 amendment	1 hour	1	38
219.608—Administrator's Determination of Random Alcohol Testing Rate.	6 railroads	2 MIS reports	2 hours	4	152
219.609—Notice by Employee Asking to be Excused from Random Alcohol Testing.	200 employees	2 documented excuses.	15 minutes	.50	17
219.801—Alcohol Testing Management Information System Data Collection Form.	6 railroads	1 form	4 hours	4	152
—''EZ'' Data Collection Form	6 railroads	1 form	2 hours	2	76
219.803—Drug Testing MIS Data Collection Form.	6 railroads	1 form	4 hours	4	152

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden hours
—Drug Testing MIS Zero Positives Data Coll. Form.	6 railroads	5 forms	2 hours	10	380
219.901/903—Retention of Breath Alcohol/ Urine Drug Testing Records.	6 railroads	240 records	5 minutes	20	300

[1] Included in 219.601(a).

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 17, Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, entitled ''Federalism,'' requires that each agency in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide[] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency'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 the State and local officials have been met * * *

See section 6(b)(2)(B).

Normally, FRA performs these required Federalism consultations in the early stages of a rulemaking at meetings of the full Railroad Safety Advisory Committee (''RSAC''), which includes representatives of groups representing State and local officials. Shortly after RSAC's inception FRA agreed not to task the RSAC with rulemaking concerning alcohol and drug testing issues, since, as discussed above, these issues require extensive coordination and consultation with both DOT and HHS.

FRA has instead solicited comment on the Federalism implications of this proposed rule from nine groups designated as representatives for various State and local officials. On March 17, 2000, FRA sent a letter seeking comment on the Federalism implications of this NPRM and on the Interim Final Rule to the following organizations: the American Association of State Highway and Transportation Officials, the Association of State Rail Safety Managers, the Council of State Governments, The National Association of Counties, the National Association of Towns and Townships, the National Conference of State Legislatures, the National Governors' Association, the National League of Cities, and the U.S. Conference of Mayors. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives. FRA will adhere to Executive Order 13132 when issuing a final rule in this proceeding.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions Categorically Excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that

before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *

detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

XII. Request for Public Comment

In accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60-day comment period is appropriate to allow parties with interests to comment on this proposed rule. FRA solicits written comments on all aspects of this proposed rule, and FRA may make changes to the final rule based on comments received in response to this NPRM.

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposal

In consideration of the foregoing, the FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

2. Section 219.3 is revised to read as follows:

§ 219.3 Application.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short haul rail passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102) in the United States.

(b) *Exceptions for domestic railroads and foreign railroads.* (1) This part does not apply to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

(2) Subparts D, E, F and G of this part do not apply to a railroad that—

(i) Has a total of 15 or fewer employees who are covered by the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, or who would be subject to the hours of service laws at 49 U.S.C. 21103, 21104, or 21105 if their services were performed in the United States; and

(ii) Does not operate on the tracks in the United States of another railroad (or otherwise engage in joint operations in the United States with another railroad) except as necessary for purposes of interchange.

(3) Subpart I of this part does not apply to a railroad that has fewer than 400,000 total employee hours, including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States but also while outside the United States. For purposes of this paragraph (b)(3), the term ''employees of the railroad'' includes individuals who perform service for the railroad, including not only individuals who receive direct monetary compensation from the railroad for performing a service for the railroad, but also such individuals as employees of a contractor to the railroad who perform a service for the railroad.

(c) *Exception for foreign railroads.* Subparts E, F, and G of this part do not apply to service in the United States or outside the United States of a foreign railroad performed by a covered signal employee of the foreign railroad if the employee's primary place of reporting is located outside the United States.

Note to paragraph (c) of this section: Unless otherwise provided by paragraph (b) of this section, subparts A, B, C, D, H, I, and J of this part apply to service in the United States of a foreign railroad performed by a covered signal employee of the foreign railroad if the employee's primary place of reporting is located outside the United States. Unless otherwise provided by paragraph (b) of this section, this part applies to the following: (1) Operations in the United States of a foreign railroad conducted by a covered train employee of the foreign railroad if the employee's primary place of service (''home terminal'') for rail transportation services is located outside the United States or inside the United States; (2) service in the United States performed by a covered dispatching service employee of the foreign railroad if the employee's primary place of reporting is located outside the United States or inside the United States ; and (3) service in the United States performed by a covered signal employee of the foreign railroad if the employee's primary place of reporting is located in the United States.

3. Section 219.5 is amended by revising the definition of *covered employee* and adding new definitions in alphabetical order, to read as follows:

§ 219.5 Definitions.

* * * * *

Covered dispatching service employee means a person who has been assigned to perform service in the United States subject to the limitations on duty hours of dispatching service employees under the hours of service laws at 49 U.S.C. 21105 during a duty tour, whether or not the person has performed or is currently performing such service, and a person who performs such service. For the purposes of pre-employment testing only, the term ''covered dispatching service employee'' includes a person applying to perform service in the United States subject to 49 U.S.C. 21105.

Covered employee means a person who has been assigned to perform service in the United States subject to the hours of service laws (49 U.S.C. ch. (211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service. (An employee is not ''covered'' within the meaning of this part exclusively by reason of being an employee for purposes of 49 U.S.C. 21106.) For the purposes of pre-employment testing only, the term ''covered employee'' includes a person applying to perform covered service in the United States.

Covered service means service in the United States that is subject to the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

Covered signal employee means a person who has been assigned to perform service in the United States subject to the limitations on duty hours of signal employees under the hours of service laws at 49 U.S.C. 21104 during a duty tour, whether or not the person has performed or is currently performing such service, and a person who performs such service. For the purposes of pre-employment testing only, the term ''covered signal employee'' includes a person applying to perform service in the United States subject to 49 U.S.C. 21104.

Covered train employee means a person who has been assigned to perform service in the United States subject to the limitations on duty hours of train employees under the hours of service laws at 49 U.S.C. 21103 during a duty tour, whether or not the person has performed or is currently

performing such service, and a person who performs such service. For the purposes of pre-employment testing only, the term ''covered train employee'' includes a person applying to perform service subject to 49 U.S.C. 21103.

* * * * *

Domestic railroad means a railroad that is incorporated in the United States.

* * * * *

Foreign railroad means a railroad that is incorporated outside the United States.

* * * * *

General railroad system of transportation means the general railroad system of transportation in the United States.

* * * * *

State means a State of the United States of America or the District of Columbia.

* * * * *

United States means all of the States.

* * * * *

4. Section 219.801(a) is revised to read as follows:

§ 219.801 Reporting alcohol misuse prevention programs results in a management information system.

(a) Each railroad that has 400,000 or more total employee hours (including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States but also while outside the United States) must submit to FRA by March 15 of each year a report covering the previous calendar year (January 1–December 31), summarizing the results of its alcohol misuse prevention program. As used in this paragraph, the term ''employees of the railroad'' includes individuals who perform service for the railroad, including not only individuals who receive direct monetary compensation from the railroad for performing a service for the railroad, but also such individuals as employees of a contractor to the railroad who perform a service for the railroad.

* * * * *

5. Section 219.803(a) is revised to read as follows:

§ 219.803 Reporting drug misuse prevention program results in a management information system.

(a) Each railroad that has 400,000 or more total employee hours (including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States but also while outside the United States) must submit to FRA by March 15 of each year an annual report covering the previous calendar year (January 1 through December 31), summarizing the results of its drug misuse prevention program. As used in this paragraph, the term ''employees of the railroad'' includes individuals who perform service for the railroad, including not only individuals who receive direct monetary compensation from the railroad for performing a service for the railroad, but also such individuals as employees of a contractor to the railroad who perform a service for the railroad.

* * * * *

Issued in Washington, DC, on November 30, 2001.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 01–30184 Filed 12–10–01; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 66, No. 238
Tuesday, December 11, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–01–06]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Tobacco Report.

DATES: Comments on this notice must be received by 60 days after publication in the **Federal Register** to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Henry R. Martin, Chief, Market Information and Program Analysis Branch, Tobacco Programs, AMS, U.S. Department of Agriculture (USDA), Stop 0280, 1400 Independence Ave. SW., Washington, DC 20250–0280, (202) 205–0489; Fax (202) 205–0099.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Report.

OMB Number: 0581–0004.

Expiration Date of Approval: 08/31/2002.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Tobacco Statistics Act of 1929 (7 U.S.C. 501–508) provides for the collection and publication of statistics of tobacco by USDA with regard to quantity of leaf tobacco in all forms in the United States and Puerto Rico, owned by or in the possession of dealers, manufacturers, growers' cooperative associations, and others with the exception of the original growers of the tobacco.

The statistics shall show the quantity of tobacco in such detail as to types, as USDA shall deem to be practical and necessary and shall be summarized as of January 1, April 1, July 1, and October 1 of each year and are due within 15 days of the summarized dates.

The information furnished under the provisions of this Act shall be used only for statistical purposes for which it is supplied. No publication shall be made by USDA whereby the data furnished by any particular establishment can be identified, nor shall anyone other than the sworn employees of USDA be allowed to examine the individual reports.

The regulations governing the Tobacco Stocks and Standards Act (7 CFR part 30) issued under the Tobacco Statistics Act specifically address the reporting requirements. Tobacco in leaf form or stems is reported by types of tobacco and whether stemmed or unstemmed. Tobacco in sheet form shall be segregated as to whether for cigar wrapper, cigar binder, for cigarettes, or for other products.

Tobacco stocks reporting is mandatory. The basic purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available to domestic manufacturers and to calculate the amount consumed in manufactured tobacco products. This data is also used for the calculation of production quotas for individual types of tobacco and for support calculations.

The Quarterly Report of Manufacture and Sales of Snuff, Smoking and Chewing Tobacco is voluntary. Prior to 1965, information on the manufacture and sale of snuff, smoking and chewing tobacco products was available from Treasury Department publications on the collection of taxes. With repeal of the Federal tax in 1965, the industry requested that the collection of basic data be continued to maintain the statistical series and all the major manufacturers agreed to furnish information. Federal taxes were reimposed in 1985 for snuff and chewing tobacco and the Treasury Department began reporting data on these products, but not in the detail desired by the industry. Data from this report is also used in the calculations to determine the production quotas of types of tobacco used in these products.

The Agriculture Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes USDA to collect, tabulate, and disseminate statistics on marketing agricultural products including market supplies, storage stocks, quantity, quality and condition of such products in various positions in the marketing channel, utilization of sub-products, shipments, and unloads.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.92 hours per response.

Respondents: Primarily tobacco dealers, manufacturers, and growers' cooperative associations including small businesses or organizations.

Estimated Number of Respondents: 76.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 278.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Henry R. Martin, Chief, Market Information and Program Analysis Branch, Tobacco Programs, AMS, USDA Stop 0280, 1400 Independence Ave. SW., Washington, DC 20250–0280. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 4, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–30500 Filed 12–10–01; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

Brush Boulder Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Cascade Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a resource management project in the North Fork Payette River. The entire project area is located within watersheds that drain directly into the North Fork Payette River or its tributaries, downstream of Lake Cascade. The project area is located 7 miles southwest of Cascade, Idaho, and about 100 miles north of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision. At this time, no public meetings to discuss the project are planned.

Proposed Action: Two primary objectives have been identified for the project: (1) Reduce current and future stand susceptibility to forest insects, and (2) improve long-term stand growth to or near levels indicative of healthy, sustainable forests.

The Proposed Action would treat a total of 2,350 acres in the 15,287-acre project area. An estimated 10.0 MMBF of timber would be harvested using ground-based (1,209 acres), skyline (154 acres), and helicopter (159 acres) yarding systems. The Proposed Action would employ a variety of silvicultrual prescriptions including preparation cut of a shelterwood (619 acres), improvement cut (205 acres), improvement cut followed by precommercial thinning (479 acres), seed cut shelterwood (126 acres), final removal shelterwood (27 acres), final removal shelterwood followed by precommercial thinning (12 acres), clearcut with reserve trees (54 acres), and precommercial thinning (828 acres). Precommercial thinning would occur within both plantations and previously managed stands with an overstory component (such as seed cut shelterwoods) where natural and/or artificial regeneration has been established.

The existing transportation system would be improved to facilitate log haul and reduce sedimentation with individual sections of 3.5 miles of road being reconstructed. An estimated 1.4 miles of specified road and 0.7 mile of temporary road would be constructed to facilitate harvest. Roughly 4.4 miles of existing roads would be closed seasonally (September 15 to June 1) with gates to all motorized traffic with the exception of snowmobiles and administrative use. An additional 5.0 miles would be closed seasonally (September 15 to June 1) with gates to vehicles with wheelbases exceeding 40 inches in width with the exception of administrative use. In addition, 0.1 mile of the existing 404B road and the pioneered ford of Olson Creek adjacent to the 404B crossing would be decommissioned.

Preliminary Issues: Preliminary concerns with the Proposed Action include potential impacts on: (1) The visual quality of the area; (2) terrestrial wildlife species; (3) sediment delivery to streams; and (4) the Snowbank Inventoried Roadless Area (IRA).

Possible Alternatives to the Proposed Action: One alternative to the Proposed Action discussed thus far is a no action alternative. Other alternatives will likely be developed as issues are identified and information received.

Decisions to be Made: The Boise National Forest Supervisor will decide the following. Should roads be built and vegetation managed within the Brush Boulder Project Area at this time, and if so; where within the project area, and how many miles of road should be built; and which stands should be treated and what silvicultural systems should be used? What design features and/or mitigation measures should be applied to the project? Should decommissioning of a portion of the 404B road be implemented at this time?

DATES: Written comments concerning the proposed project and analysis are encouraged and should be postmarked within 30 days following publication of this announcement in the **Federal Register**.

ADDRESSES: Comments should be addressed to the Cascade Ranger District, ATTN: Keith Dimmett, P.O. Box 696, Cascade, ID 83611. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Keith Dimmett at the address mentioned above or by calling 208–382–7430.

Schedule: Draft Environmental Impact Statement (DEIS), February 2002. Final Environmental Impact Statement (FEIS), April 2002.

SUPPLEMENTARY INFORMATION: Roughly half of the project area occurs within the Snowbank IRA (02924). None of the activities associated with the Proposed Action would occur within this IRA or any 1,000-acre or larger contiguous unroaded area.

Three different management areas occur within the Brush Boulder Project Area. Roughly 1,947 acres of the project area occur within management area (MA) 48 or 49. Management direction for these two MA's emphasizes recreation opportunities. The remaining 13,340 acres of the project area occur within MA 50 where management direction emphasizes protection of scenic qualities in visually sensitive areas, and intensified timber management in areas of low visual sensitivity. All of the activities associated with the Proposed Action would occur within MA 50.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the DEIS 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: David D. Rittenhouse, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: December 4, 2001.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 01–30532 Filed 12–10–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fairfield Ranger District Sheep Allotment AMP EIS, Fairfield Ranger District, Elmore & Camas Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of intent to prepare environmental impact statement.

SUMMARY: This document provides notice of cancellation of the intent to prepare an environmental impact statement (EIS) on a proposal to update the allotment management plans for twelve sheep allotments on the Fairfield Ranger District.

DATES: The draft environmental impact statement was originally scheduled for March 2001 with a 45-day public review and comment period. The publishing and distribution of this draft EIS is cancelled.

FOR FURTHER INFORMATION CONTACT: Terry Fletcher, Interdisciplinary Team Leader, Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, ID 83301 (208) 737–3200.

SUPPLEMENTARY INFORMATION: A notice of intent to prepare an environmental impact statement appeared in the **Federal Register** on September 1, 2000 (pages 53261 and 53262) announcing the intent to prepare and release a draft EIS in March 2001 with a final EIS scheduled for May 2001. The deadline for public scoping comments expired October 6, 2000.

The original notice of intent informed the public of the agency's intention to document the analysis of twelve sheep allotments in an EIS. The primary reason for the cancellation is that revised direction has been issued by the Responsible Official to complete a capacity determination on all thirty-one sheep and cattle allotments on the Fairfield Ranger District.

Ed Waldopfel,

Acting Forest Supervisor.

[FR Doc. 01–30528 Filed 12–10–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–831]

Stainless Steel Plate in Coils From the Republic of Korea; 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 of stainless steel plate in coils from the Republic of Korea.

SUMMARY: On June 7, 2001, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel plate in coils from the Republic of Korea (66 FR 30699). This review covers imports of subject merchandise from Pohang Iron & Steel Co., Ltd. (''POSCO''). The period of review (''POR'') is November 4, 1998 through April 30, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results of review. The final weighted-average dumping margin is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: December 11, 2001.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Laurel LaCivita, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182 or (202) 482–4243, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

Background

On June 7, 2001, the Department published *Stainless Steel Plate in Coils From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 30699 (June 7, 2001) (''*Preliminary Determination*''). We invited parties to comment on these preliminary results. The review covers imports of subject merchandise from POSCO. The period of review (''POR'') is November 4, 1998 through April 30, 2000. We received written comments on July 9, 2001 from petitioners (Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, (AFL-CIO/CLC)) and POSCO. On July 23, 2001, we received rebuttal comments from petitioners and POSCO. We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

For purposes of this administrative review, the product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order is the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings:

7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Bernard Carreau, Acting Assistant Secretary for Import Administration, dated December 4, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum,* is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations. The changes are listed below:

- We adjusted POSCO's reported costs to include an amortized portion of its deferred foreign exchange losses.
- We adjusted POSCO's reported foreign exchange ratio to include gains and losses associated with cash, A/P, ''other'' accounts, and loans payable in the numerator.
- We reversed our position on affiliated party inputs from the preliminary results and, for these final results, we are not making an adjustment to POSCO's costs for an affiliated party input.
- We revised POSCO's per-unit G&A expense to apply POSCO's G&A ratio to the sum of the revised cost of manufacturing plus packing.
- We calculated an adjustment for warranty expense and included it as an adjustment to U.S. price.
- We have recalculated home market credit for POSCO's U.S. dollar home market sales using POSAM's U.S. dollar interest rate instead of POSCO's Korean won interest rate.
- We have recalculated POSAM's indirect selling expenses to adjust the amount of interest expense applicable to U.S. sales of subject merchandise and to take into account an offset for imputed credit.

Final Results of Review

We determine that the following percentage margin exists for the period November 4, 1998 through April 30, 2000:

STAINLESS STEEL PLATE IN COILS FROM KOREA

Manufacturer/exporter/reseller	Margin (percent)
POSCO	1.19

The Department shall determine, and U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service. For duty-assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of stainless steel plate in coils from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate 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, a prior review, or the original less-than-fair-value (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) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 16.26 percent, which is the all others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also 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 could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. 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 terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: December 4, 2001.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

Appendix 1—Issues in Decision Memorandum

Comment 1: Costs for Certain Products that were Reported in a Distortive Manner
Comment 2: Reporting of Home Market Sales
Comment 3: Home Market Credit
Comment 4: Indirect Selling Expenses for POSAM
Comment 5: Unrecognized Bad Debt
Comment 6: Duty Drawback
Comment 7: Export Warranty Expenses
Comment 8: G&A Calculation
Comment 9: Valuation of Re-introduced Scrap
Comment 10: Cost for Affiliate-supplied Inputs
Comment 11: POSCO's L-grade Adjustment
Comment 12: Energy cost
Comment 13: Financial Expenses
Comment 14: Imputed Credit Expenses in the Calculation of Indirect Selling Expenses

Comment 15: Deferred foreign exchange losses

[FR Doc. 01–30605 Filed 12–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–831]

Stainless Steel Plate in Coils From the Republic of Korea; Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On June 19, 2001, the Department of Commerce published in the **Federal Register** (66 FR 32934) a notice announcing the initiation of an administrative review of the antidumping duty order on stainless steel plate in coils from the Republic of Korea for one producer/exporter of the subject merchandise, Pohang Iron & Steel, Co., Ltd. (''POSCO'') covering the period of review (''POR''), which is May 1, 2000 through April 30, 2001. The Department of Commerce is rescinding this review with respect to POSCO pursuant to a timely request under 19 CFR 351.213(d)(1) from POSCO, the only party that requested the review. Petitioners did not request a review of POSCO.

EFFECTIVE DATE: December 11, 2001.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Laurel LaCivita, Office 9, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182, or (202) 482–4243, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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

Background

The Department published in the **Federal Register** on May 1, 2001 (66 FR 21740), a ''Notice of Opportunity to Request Administrative Review'' of the antidumping duty order on stainless steel plate in coils from the Republic of Korea. On May 31, 2001, POSCO requested that the Department conduct an administrative review of this order with respect to its sales of the subject merchandise. On June 19, 2001, the Department of Commerce initiated an administrative review for the period May 1, 2000 through April 30, 2001 (66 FR 32934). On July 5, 2001, POSCO, the only interested party to request a review in this case, withdrew its request for review. Since POSCO withdrew its request for review within 90 days of the date of publication of the notice of initiation, in accordance with 19 CFR 351.213(d)(1), the Department is rescinding the review for the period May 1, 2000 through April 30, 2001.

This notice is issued and published in accordance with 19 C.F.R. 351.213(d)(4).

Dated: December 5, 2001.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–30606 Filed 12–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Massachusetts Institute of Technology; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5 PM in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–020. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Impact Module for Nano Indentor. *Manufacturer:* Micro Materials Ltd., United Kingdom. *Intended Use:* See notice at 66 FR 55914, November 5, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the previously imported instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–30607 Filed 12–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 31, 2001, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on industrial phosphoric acid from Israel for the period January 1, 1999 through December 31, 1999 (66 FR 45965). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''). For information on the subsidy rate for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: December 11, 2001.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Sean Carey, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1391 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for

which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (''Rotem''). We published the preliminary results on August 31, 2001 (66 FR 45965). We invited interested parties to comment on the preliminary results. We received no comments from any of the parties.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (''the Act''). All citations to the Department's regulations reference 19 CFR part 351 (2000), unless otherwise indicated.

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

Subsidies Valuation Information

Period of Review

The period for which we are measuring subsidies is calendar year 1999.

Allocation Period

In *British Steel plc.* v. *United States,* 879 F.Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, as it was articulated in the *General Issues Appendix* appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37225 (July 9, 1993) (GIA). In accordance with the Court's decision, on remand, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsides is a company-specific average useful life (AUL). This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc.* v. *United States,* 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*).

However, in administrative reviews in which the Department examines non-recurring subsidies received prior to the POR which have been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not practicable to reallocate those subsidies over a different period of time. When a countervailing duty rate in earlier segments of a proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. (*See, e.g., Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997)).

In this administrative review, the Department has considered non-recurring subsidies previously allocated in earlier administrative reviews under the old practice, non-recurring subsidies also previously allocated in recent administrative reviews under the new practice, and non-recurring subsidies received during the POR to which the current countervailing duty regulations apply. Under these circumstances, and as discussed below, the Department has used different allocation periods depending upon the date of receipt of the non-recurring subsidy. For non-recurring subsidies received prior to the 1995 administrative review (the first review for which the Department implemented the *British Steel I* decision), the Department is using the original allocation period of 10 years. For non-recurring subsidies received since 1995, Rotem has submitted in each subsequent administrative review, including this one, AUL calculations based on depreciation and values of productive assets reported in its financial statements. In accordance with the Department's practice, we derived Rotem's company-specific AUL for each respective administrative review since 1995 by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to depreciation for a 10-year period. In the current review, this methodology resulted in an AUL of 23 years. Pursuant to section 351.524(d)(2) of the Department's regulations, this company-specific AUL rebuts the presumptive use of the IRS tables. Therefore, for the purposes of this review, non-recurring subsidies received during the POR have been allocated over 23 years.

Privatization

Israel Chemicals Limited (ICL), the parent company which owns 100 percent of Rotem's shares, was partially privatized in 1992, 1993, 1994, 1995, 1997 and 1998. In this administrative review, the Government of Israel (GOI) and Rotem reported that additional shares of ICL were sold in 1999. We have previously determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest. *See Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel,* 61 FR 53351, 53352 (October 11, 1996) (*1994 Final Results*). In this review and prior reviews of this order, the Department found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations.

On December 4, 2000, the Department announced a new privatization approach in a remand determination following the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Delverde Srl* v. *United States,* 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied* (June 20, 2000) (*Delverde III*). The Department applied this new approach in the final results of the prior administrative review of this order. *See Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel,* 66 FR 15839 (March 21, 2001) (*1998 Final Results*). Under this approach, the first requirement is to determine whether the person to which the subsidies were given is, in fact, distinct from the person that produced the subject merchandise exported to the United States. If the two persons are distinct, the original subsidies may not be attributed to the new producer/exporter. The Department would, however, consider whether any subsidy had been bestowed upon that producer/exporter as a result of the change-in-ownership transaction. On the other hand, if the original subsidy recipient and the current producer/exporter are considered to be the same person, that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' that is the firm under investigation or review. Assuming that the original subsidy had not been fully amortized under the Department's normal allocation methodology as of the POR, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor represents itself as the continuation of the previous enterprise,

as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale entity to be the same person as the pre-sale entity if, based on the totality of the factors considered, we determine that the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

Using the approach described above, we have analyzed the information provided by the GOI and Rotem to determine whether the subsidies received by Rotem continued to benefit Rotem during the POR. By applying this approach to the facts and circumstances of the instant countervailing duty administrative review of industrial phosphoric acid from Israel and the relevant privatization of ICL and its subsidiary, Rotem, we find that the pre-sale and post-sale entities are not distinct persons. Specifically, Rotem maintains the same plants and uses the same production facilities to manufacture and sell the same products; continues to rely on the same suppliers and customer base; and employs largely the same personnel and management. *See* the Department's June 13, 2001, letter to Rotem (with attached Change in Ownership Analysis Memorandum from the 1998 administrative review) and the *1998 Final Results* and accompanying Decision Memorandum (section entitled Change in Ownership), for a complete discussion of our analysis of ICL's and Rotem's privatization. Therefore, we determine that the subsidies provided to Rotem, prior to the privatization of ICL, continue to benefit Rotem after ICL's privatization.

Grant Benefit Calculations

To calculate the benefit for the POR, we followed the same methodology used in the final results of prior administrative reviews. We converted Rotem's shekel-denominated grants into U.S. dollars, using the exchange rate in effect on the dates the grants were received. We then applied the grant methodology to determine the benefit for the POR. *See e.g., Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review,* 63 FR 13626, 13633 (March 20, 1998) (*1995 Final Results*).

As a result of our privatization approach and our determination that Rotem continues to benefit from subsidies received prior to the privatization of ICL, the full value of the benefit allocable to the 1999 POR from non-recurring subsidies is being used in the calculation of Rotem's subsidy rate.

Discount Rates

We considered Rotem's cost of long-term borrowing in U.S. dollars as reported in the company's financial statements for use as the discount rate used to allocate the countervailable benefit over time. However, this information includes Rotem's borrowing from its parent company, ICL, and thus does not provide an appropriate discount rate. Therefore, we followed the same methodology used in the final results of prior administrative reviews in using ICL's cost of long-term borrowing in U.S. dollars in each year from 1984 through 1999 as the most appropriate discount rate. ICL's interest rates are shown in the notes to the company's financial statements, public documents which are in the record of this review. *See Comment 9* in the *1995 Final Results.*

Analysis of Programs

There were no comments submitted to the Department with respect to our preliminary results of review; therefore, our preliminary results provide the basis for these final results of review. Accordingly, we determine the following:

I. Programs Conferring Subsidies

A. Encouragement of Capital Investments Law (ECIL)

In the preliminary results, we found that the ECIL grant program conferred countervailable subsidies on the subject merchandise. It is de jure specific because the program limits the availability of grants to enterprises located only in Development Zones A and B. Rotem is located in Development Zone A, and received ECIL investment and capital grants in disbursements over a period of years for several projects. Our review of the record has not led us to change any findings or calculations. Accordingly, the subsidy from ECIL grants is 4.57 percent ad valorem for the POR, which remains unchanged from the preliminary results.

B. Infrastructure Grant Program

In this review, we preliminarily determined that Rotem received an infrastructure grant to initiate and establish industrial areas, and that this grant conferred countervailable subsidies on the subject merchandise. Our review of the record has not led us to change any findings or calculations. Accordingly, the subsidy for this program is 0.21 percent ad valorem, which remains unchanged from the preliminary results.

C. Encouragement of Industrial Research and Development Grants (EIRD)

In the preliminary results, we found that three EIRD grant disbursements received by Rotem were tied to research related to the production of IPA. Our review of the record has not led us to change any findings or calculations. Accordingly, the subsidy for this program is 0.02 percent ad valorem, which remains unchanged from the preliminary results.

II. Programs Determined To Be Not Used

We examined the following programs and preliminarily determined that the producer and/or exporter of the subject merchandise did not apply for or receive benefits under these programs during the POR. Our review of the record has not led us to change our finding for these final results.

A. Environmental Grant Program
B. Reduced Tax Rates under ECIL
C. ECIL Section 24 loans
D. Dividends and Interest Tax Benefits under Section 46 of the ECIL
E. ECIL Preferential Accelerated Depreciation

III.Other Program Examined

Labor Training Grant

For purposes of this administrative review, we expensed this labor training grant and have found that any subsidy which could be calculated for this program would be so small (significantly less than 0.005 percent *ad valorem*) that there would be no impact on the overall subsidy rate. Our review of the record has not led us to change our finding. Therefore, we do not consider it necessary to address the issue of specificity for purposes of this administrative review and have not further considered this program. *See e.g., Final Results of Countervailing Duty Administrative Review: Live Swine from Canada,* 63 FR 2210, 2211 (January 14, 1998).

Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual *ad valorem* subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1999 through December 31, 1999, we determine the subsidy rate for Rotem to be 4.80 percent *ad valorem.* We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated

above on all appropriate entries. Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate. Thus, for the period covered by this review, January 1, 1999, through December 31, 1999, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

As a result of the International Trade Commission's determination that revocation of this countervailing duty order would not likely lead to continuation or recurrence of material injury to an industry in the United States in the reasonably foreseeable future, the Department, pursuant to section 751(d)(2) of the Act, revoked the countervailing duty order on IPA from Israel. *See Revocation Countervailing Duty Order: Industrial Phosphoric Acid from Israel,* 65 FR 114 (June 13, 2000). Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation was January 1, 2000. Accordingly, the Department has instructed Customs to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: December 4, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–30604 Filed 12–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112601C]

Marine Mammals; File No. 87–1593–01

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Daniel Costa (Principal Investigator), Institute of Marine Sciences, Earth & Marine Sciences Bldg. A316, University of California, Santa Cruz, CA, 95064, has been issued an amendment to take marine mammals for scientific research Permit No. 87–1593–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980-4018.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 9, 2001, notice was published in the **Federal Register** (66 FR 51395) that an amendment of Permit No. 87–1593–00 February 21, 2001 (66 FR 12763), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: December 4, 2001.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–30598 Filed 12–10–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

December 7, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 2001 limits.

EFFECTIVE DATE: December 10, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a notice published in the **Federal Register** on September 11, 1996 (61 FR 47892), CITA announced that Customs would be conducting investigations of transshipments of textile products produced in China and exported to the United States. Based on investigations by the U.S. Customs Service (Customs), Customs has determined that textile products in certain categories, produced or manufactured in China and entered into the United States, were entered in circumvention of the bilateral agreement effected by the Memorandum of Understanding (MOU) of February 1, 1997, and extended October 31, 2000. Consultations were held between the Governments of the United States and the People's Republic of China on this matter on October 17–18, 2001 and on December 6–7, 2001. Pursuant to Paragraph 13(E) of the bilateral MOU, the United States may charge three times the amounts transshipped to China's negotiated quantitative limits under certain conditions. Certain shipments made in 1998 of categories 338–S/339–S, 348, 638, 639, and 648 are eligible for triple charging under these provisions. Accordingly, these shipments will be triple charged to China's quotas. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the amounts listed in the letter below to the 2001 quota levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Textile Memorandum of Understanding dated February 1, 1997, between the Governments of the United States and the People's Republic of China, you are directed, effective on December 10, 2001, to charge the following amounts to the following categories for the 2001 restraint period (see directive dated December 20, 2000):

Category	Amounts to be charged
334	245 dozen.
338/339	11,532 dozen.
338–S/339–S	23,562 dozen.
340	13,073 dozen.
340–Z	15,270 dozen.
345	1,374 dozen.
347/348	174,287 dozen.
352	104,022 dozen.
638/639	123,373 dozen.
647	1,096 dozen.
648	18,388 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–30662 Filed 12–7–01; 10:35 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; meeting

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Precision Compellence will meet in closed session on January 3–4, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will conduct a comprehensive study of the ends and means of precision compellence, of the nuanced use of force, in concert with coalition partners, to achieve political, economic and moral change in countries affecting U.S. interests.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will survey the focused use of force so as to alter regimes' behavior, and in ways that are most promising to isolate regimes of concern from their populations and supporting organs and bureaucracies. This will include the means to acquire a well-founded conceptual delineation of targets critically important to the diplomatic, economic and military dominance of the regime. A regime's values and vulnerabilities being highly idiosyncratic, the Task Force shall select some concrete case studies for exploration in depth. These might include current rogue states, terrorist organizations, and future potential adversaries. Of particular relevance are the cleavage planes, where the discriminating use of force might divide the interests of different strata, political, ethnic or religious groups, or even personal rivalries.

In accordance with section 10(D) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meting will be closed to the public.

Dated: November 21, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–30493 Filed 12–10–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete and amend a system of records.

SUMMARY: The Department of the Army is deleting one notice and amending one notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 10, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Dated: December 4, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

A0600–8–104c NGB

SYSTEM NAME:

Official Military Personnel File (Army National Guard) (January 20, 2000, 65 FR 3213).

Reason: This system of records has been incorporated into A0600–8–104b TAPC, entitled ''Official Military Personnel Record''.

Amendment

A0600–8–104b TAPC

SYSTEM NAME:

Official Military Personnel file (October 13, 2000, 65 FR 60918).

CHANGES:

* * * * *

SYSTEM LOCATION:

Add to entry ''National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382, for commissioned, warrant officer or enlisted soldier in the Army National Guard.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to entry ''Army National Guard not on active duty, who are enlisted, appointed or commissioned status''.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry ''Army Regulation 600–8–104, Military Personnel Information Management/Records''.

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media and fiche.''

RETRIEVABILITY:

Delete entry and replace with ''By Social Security Number and name.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in areas accessible only to authorized personnel''; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Replace ''9700 Page Boulevard'' with ''1 Reserve Way''.

SYSTEM MANAGER(S) AND ADDRESS:

Add two new paragraphs 'Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.'

* * * * *

A0600–8–104b TAPC

SYSTEM NAME:

Official Military Personnel Record.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400 for active Army officers.

U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301 for active duty enlisted personnel.

U.S. Army Reserve Personnel Command, 9700 Page Avenue, St Louis, MO 63132–5200 for reserve personnel.

National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St Louis, MO 63132–5100, for discharged or deceased personnel.

An automated index exists at the U.S. Army Reserve Personnel Command showing physical location of the Official Military Personnel of retired, separated and files on all service members returned to active duty.

National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382, for commissioned, warrant officer or enlisted soldier in the Army National Guard.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members of the U.S. Army and Army National Guard not on active duty, who are enlisted, appointed, or commissioned status; members of the U.S. Army who were enlisted, appointed, or commissioned and were separated by discharge, death, or other termination of military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Department of Veterans Affairs benefit forms; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security clearance questionnaire; application/memo for retired pay; application for correction of military records; field/application for active duty; transfer or discharge report/Certificate of Release or Discharge from Active Duty; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks, consent/declaration of parent/guardian; Army Reserve Officers Training Corps supplemental agreement; award recommendations; academic reports; line of duty casualty report; U.S. field medical card; retirement points, deferment; pre-induction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment; enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, 10 U.S.C. section 815 appellate actions; determinations of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review by physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit transcripts; flight status board reviews; assignment agreements, limitations/waivers/election and travel; efficiency appeals; promotion/reduction/recommendations, approvals/declinations announcements/notifications, reconsiderations/worksheets elections/letters or memoranda of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, in-service details, determinations, reliefs, component; awards, pay entitlement, released, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606; DoD Instruction 1030.1, Victim and Witness Assistance; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).

PURPOSE(S):

These records are created and maintained to manage the member's Army and Army National Guard service effectively, to document historically a member's military service, and safeguard the rights of the member and the Army.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attaché assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish

requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs:

1. To provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

2. To provide information relating to authorized research projects.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, graduate record examination tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG), U.S. Army, and Army National Guard when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management Agency to facilitate participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DoD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media and fiche.

RETRIEVABILITY:

By Social Security Number and name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent. They are retained in active file until termination of service, following which they are retired to the U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army

Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Command, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of National Guard should be sent to the Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of National Guard should be sent to the Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, enlistment appointment or commission related forms pertaining to individual's military status; educational and financial institutions, training or qualifications records acquired prior to or during military services; law enforcement agencies, references provided by individuals, Army records repots, correspondence, forms, documents and other relevant papers, third parties and members of the public when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–30494 Filed 12–10–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–75–000]

Chandeleur Pipe Line Company; Notice of Filing

December 5, 2001.

Take notice that on November 30, 2001, Chandeleur Pipe Line Company (Chandeleur) tendered for filing in accordance with section 21.0 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, workpapers supporting the continuation, effective January 1, 2002 of its currently effective Fuel and Line Loss Allowance of 0.0%.

Chandeleur asserts that this filing is tendered in order to comply with the annual calculation requirements of its tariff as referenced above.

Chandeleur states that the purpose of this filing is to account for changes in amounts retained for Fuel and Line Loss Allowance pursuant to the provisions of 18 CFR 154.403(d)(3) and in accordance with section 21.0 of the General Terms and Conditions of Chandeleur Pipe Line Company's (Chandeleur) FERC Gas Tariff, Second Revised Volume No. 1.

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 on or before December 12, 2001. 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30566 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–65–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 2002:

Twenty-seventh Revised Sheet No. 18
Seventeenth Revised Sheet No. 18A
Twenty-eighth Revised Sheet No. 19

Columbia Gulf states that this filing is being submitted in accordance with the Commission's order issued on September 19, 2001 in Gas Research Institute's (GRI) Docket No. RP01–434–000 (Order Approving Settlement), and in accordance with section 31 of the General Terms and Conditions of its FERC Gas Tariff, Columbia Gulf is

submitting revised tariff sheets to reflect the 2002 GRI funding mechanism.

Columbia Gulf states that copies of its filing have been served upon its interruptible customers and affected 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30559 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF01–103–002]

Decatur Energy Center, LLC and Solutia Inc.; Notice of Filing

December 5, 2001.

Take notice that on November 30, 2001, Decatur Energy Center, LLC and Solutia Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to the application for certification of qualifying facility status of a cogeneration facility pursuant to part 292 of the Commission's regulations. The amendment provides additional information concerning the useful thermal output of the facility.

Any person who wishes to be heard or to object to granting qualifying status 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. All such motions or protests must be filed on or before December 31, 2001, and must be served on the Applicant. 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 who wishes 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 web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30554 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–74–000]

Enbridge Pipelines (KPC); Notice of Refund Report

December 5, 2001.

Take notice that on November 29, 2001, Enbridge Pipelines (KPC) tendered for filing an Excess Interruptible Revenue Refund Report.

KPC states that the report is made pursuant to section 24.5 of its FERC Gas Tariff. KPC requests a waiver from the crediting provision of section 24.5 in order to credit the amount to be refunded against the current balance of receivable from Kansas Gas Service, the only customer paying KPC's maximum rate.

KPC states that copies of the filing have been served on all parties to the proceeding in Docket No. CP96–152.

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 on or before December 12, 2001. 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30565 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–67–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet to become effective January 1, 2002:

Sixth Revised Sheet No. 5
Ninth Revised Sheet No. 6
Fifth Revised Sheet No. 10

Equitrans states that the purpose of this filing is to comply with the ''Order Approving the Gas Research Institute's 2002 Research, Development and Demonstration Program and 2002–2006 Five Year Plan'' issued on September 19, 2001 in Docket No. RP01–434–000. The Commission authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 2002 GRI unit surcharge approved by the Commission is (1) $0.0660 per dekatherm (Dth) per month demand surcharge for high load factor customers, (2) $0.0407 per Dth per month demand surcharge for low load factor customers and (3) $0.0055 per Dth commodity/usage surcharge.

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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30561 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–66–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2002:

Fiftieth Revised Sheet No. 8A
Forty-Second Revised Sheet No. 8A.01
Forty-Second Revised Sheet No. 8A.02
Forty-Sixth Revised Sheet No. 8B
Thirty-Ninth Revised Sheet No. 8B.01

FGT states that it is filing the above referenced tariff sheets pursuant to the Gas Research Institute's (GRI) Year 2002 Research, Development and Demonstration Program and 2002–2006 Five-Year Plan as approved by the Federal Energy Regulatory Commission Order issued September 19, 2001 in Docket No. RP01–434. For the year of 2002, the funding mechanism includes the approved GRI demand charges of 6.6 cents per MMBtu per month (.22 cents per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors exceeding 50%, 4.07 cents per MMBtu per month (.13 cents per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors of 50% or less and a volumetric charge of 0.55 cents per MMBtu to be applicable to all non-discounted interruptible rates and to the usage portion of two-part rates. In addition, the 2002 funding mechanism includes a volumetric charge of 0.88 cents per MMBtu to be applicable to all one-part small customer rates. This funding mechanism provides for a decrease in GRI charges as compared to the currently effective 2001 GRI charges.

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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30560 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–70–000]

Florida Gas Transmission Company; Notice of Filing of Annual Report

December 5, 2001.

Take notice that on November 30, 2001 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, schedules detailing certain information related to its Cash-Out Mechanism, Fuel Resolution Mechanism and Balancing Tools charges for the accounting months October 2000 through September 2001. No tariff changes are proposed.

FGT states that section 19.1 of the General Terms and Conditions of its Tariff provides for an Annual Report containing an accounting of costs and revenues associated with the Cash-Out Mechanism, Fuel Resolution Mechanism and various Balancing Tools provided for in FGT's Tariff. The instant filing is made in compliance with those provisions.

FGT states that it has experienced a revenue deficiency of $7,140,225 during the current Settlement Period, which when combined with $86,905 net deficiency carried forward, results in a cumulative underrecovery of $7,227,130 as of September 30, 2001. FGT further states that the net deficiency carried forward of $86,905 includes interest calculated in compliance with the Commission's order issued November 20, 2001 in Docket No. RP01–511–000.

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 on or before December 12, 2001. 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30563 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–82–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2002:

Fifth Revised Sheet No. 131
Third Revised Sheet No. 133
Fifth Revised Sheet No. 184B
First Revised Sheet No. 184B.01
Second Revised Sheet No. 184C

FGT states that the cash-out pricing provisions of its Tariff have ceased to discourage imbalances and, during periods of price volatility, actually encourage or reward imbalances. FGT states that during the cash-out Settlement Period 9, FGT experienced an underrecovery in its cash-out mechanism of $5,377,712 and an overall underrecovery of its system balancing costs and revenues of $7,140,225.

FGT states that it is filing changes to its cash-out provisions to base its imbalance settlement prices on an arithmetic average of Gas Daily daily prices from the sixth day of the applicable month to the fifth day of the following month in order to reduce a bias to first of the month pricing and create uncertainty as to the prices to be paid or received by imbalance parties for month-end imbalances. In addition, FGT is proposing an interest component to be applied to cumulative monthly imbalances beginning with the cumulative net balance at the end of Settlement Period 9 ended September 30, 2001.

Finally, FGT states that it is filing to make certain clarifying changes to Section 19.1 of the General Terms and Conditions of its Tariff to reflect the methodology and format used by FGT in preparation of the Annual Report of system balancing activities. FGT states that the clarifications will result in no changes to the preparation of the Annual Report, but rather conform the tariff mechanics to the methodology and format historically used by FGT.

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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30572 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–25–000]

Indianapolis Power & Light Company; Notice of Filing

December 5, 2001.

Take notice that on November 14, 2001, Indianapolis Power & Light Company (IPL) filed an application to transfer control of jurisdictional facilities under section 203 of the Federal Power Act. IPL proposed to transfer control of certain of its jurisdictional transmission facilities to the Midwest Independent System Operator, Inc. (Midwest ISO).

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 before December 12, 2001. 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 web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30550 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3000–001, EC01–146–001 and RT01–101–001]

International Transmission Company, DTE Energy Company; Notice of Filing

December 5, 2001.

Take notice that on November 27, 2001, International Transmission Company tendered for filing the remaining outstanding, executed signature pages to the ''Supplemental Agreement'' filed with the Commission by International Transmission on November 15, 2001, in the above-referenced dockets. The Supplemental Agreement is a multi-party contract that amends the ''Appendix I Agreement By and Between International Transmission Company and the Midwest Independent Transmission System Operator, Inc., dated August 31, 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, 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 before December 18, 2001. 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 web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for

assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30552 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–80–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 29, 2001, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective January 1, 2002:

Sixth Revised Sheet No. 5
Second Revised Sheet No. 5–A
Fourth Revised Sheet No. 6

Kern River states that the purpose of this filing is to revise its tariff to incorporate the Gas Research Institute (GRI) surcharges approved by the Commission for 2002.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30571 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–68–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A, to become effective January 1, 2002.

Midwestern states that the purpose of this filing is to implement a new rate schedule (Rate Schedule PAL) under which Midwestern will provide a park and loan service. Midwestern is proposing to revise certain currently effective tariff sheets to incorporate the PAL service.

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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30562 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–71–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

December 5, 2001.

Take notice that on November 30, 2001, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 5, to become effective January 1, 2002.

Midwestern states that the purpose of this compliance tariff filing is to reflect the GRI surcharge amounts as follows: (1) A commodity surcharge of .55 cents per Dth, (2) a high load factor demand surcharge of 6.6 cents per Dth, (3) a low load factor demand surcharge of 4.07 cents per Dth, and (4) a small customer surcharge of .88 cents per Dth. This filing was made in compliance with the Commission's letter order dated September 19, 2001 in Docket No. RP01–434–000.

Midwestern states that copies of this filing have been sent to all of Midwesterns contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically

via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30564 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–28–000]

Nevada Power Company and Sierra Pacific Power Company, Complainants, v. Enron Power Marketing, Inc., Respondent; Notice of Complaint

December 5, 2001.

Take notice that on November 30, 2001, Nevada Power Company (NPC) and Sierra Pacific Power Company (SPPC) (collectively, the Nevada companies) filed a complaint requesting that the Commission mitigate unjust and unreasonable prices in sales contracts between NPC and Enron Power Marketing, Inc. (Enron) and between SPPC and Enron entered into in late 2000 and the first half of 2001 for delivery after January 1, 2001.

The Nevada companies request that the Commission set a refund effective date of 60 days from the date of filing of their complaint.

Copies of the Nevada companies' filing were served on Enron and the Public Utility Commission of Nevada.

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, 2001. 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. Answers to the complaint shall also be due on or before December 20, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30551 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–62–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective January 1, 2002:

60 Revised Sheet No. 50
61 Revised Sheet No. 51
57 Revised Sheet No. 53
10 Revised Sheet No. 56

Northern states that this filing establishes the System Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 2002 for the period January 1 through December 31, 2002.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30556 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–64–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to be effective January 1, 2002:

Fifth Revised Volume No. 1

59 Revised Sheet No. 50
60 Revised Sheet No. 51
27 Revised Sheet No. 52
56 Revised Sheet No. 53
9 Revised Sheet No. 56

Original Volume No. 2

167 Revised Sheet No. 1C
43 Revised Sheet No. 1C.a

Northern states that the purpose of this filing is to set forth the approved 2002 Gas Research Institute (GRI) surcharges for the 2002 calendar year to be effective January 1, 2002 in accordance with the Commission's Order Approving The Gas Research Institute's Year 2002 Research, Development and Demonstration Program and 2002–2006 Five-Year Plan issued on September 19, 2001 in Docket No. RP01–434–000.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30558 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–77–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 29, 2001, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets to become effective January 1, 2002:

Third Revised Volume No. 1

Twenty-Second Revised Sheet No. 5

Original Volume No. 2

Twenty-Eighth Revised Sheet No. 2.2

Northwest states that the purpose of this filing is to revise its tariff to incorporate the Gas Research Institute (GRI) surcharges approved by the Commission for 2002.

Northwest states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30568 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–419–001, Docket No. CP01–421–001]

Portland General Electric Company; Notice of Amendment

December 5, 2001.

Take notice that on September 28, 2001, Portland General Electric Company (Portland General), tendered for filing pursuant to Section 7 of the Natural Gas Act and parts 157 and 284 of the Commission's regulations, an amendment to its application for blanket certificates of public convenience and necessity and request for waiver and extension of time filed with the Commission on July 27, 2001.

Portland General states that the purpose of the filing is to amend Portland General's application in order to: (1) Specify that Portland General has executed a transportation service agreement for the transportation of natural gas on the Kelso-Beaver Pipeline which gas will be used for Portland General's own consumption; (2) make a conforming change to the *pro forma* Tariff filed as Exhibit P to the application to reflect Portland General's execution of this agreement; and (3) request waiver of the Part 284 open-access reporting requirements to the extent not fully encompassed by Portland General's request for waiver in its application.

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 on or before December 12, 2001. 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30549 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–61–000]

Questar Pipeline Company; Notice of Tariff Filing

December 5, 2001.

Take notice that on November 29, 2001, Questar Pipeline Company tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2002:

First Revised Volume No. 1

Twenty-Second Revised Sheet No. 5

Original Volume No. 3

Thirtieth Revised Sheet No. 8

On June 1, 2001, GRI requested approval of funding for its year 2002 research, development and demonstration program and its 2002–2006 five-year plan. The Commission issued an order on September 19, 2001, in Docket No. RP01–434–000, approving GRI's funding plans. Questar's filing incorporated the approved GRI surcharge rates in the Statement of Rates to Questar's tariff.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30555 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–84–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001 Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised sheets, with an effective date of January 1, 2002:

Fifty-sixth Revised Sheet No. 14
Seventy-seventh Revised Sheet No. 15
Fifty-sixth Revised Sheet No. 16
Seventy-seventh Revised Sheet No. 17
Fortieth Revised Sheet No. 18
Tenth Revised Sheet No. 22

Southern states that the proposed tariff sheets implement the Gas Research Institute's (GRI) revised surcharges for 2002. The 2002 GRI Funding Formula consists of surcharges of (i) .55¢ per Dth applicable to the commodity/usage portion of firm service rates and to interruptible rates and (ii) either 6.6¢ per Dth for high load factor customers or 4.07¢ per Dth for low load factor customers on the demand/reservation component of firm service rates. The 2002 GRI Funding Formula provides for a surcharge of .88¢ per Dth on service rates for small customers. The Commission authorized these surcharges in Docket No. RP01–434–000 to be effective January 1, 2002. Consistent with the Commission's order dated September 19, 2001, Southern has proposed these tariff sheets to be effective January 1, 2002.

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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30573 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–86–000]

Southern Natural Gas Company; Notice of Settlement Compliance Filing

December 5, 2001.

Take notice that on November 30, 2001, Southern Natural Gas Company (Southern) tendered for filing its annual report pursuant to Section 14.2 of the General Terms and Conditions of its tariff.

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern's storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as necessary to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of its rates under Rate Schedules FT, FT–NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory. Southern proposed no change in the surcharge currently in effect.

Southern states that copies of the filing were served upon Southern's 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30574 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–88–000]

Southern Natural Gas Company; Notice of Settlement Compliance Filing

December 5, 2001.

Take notice that on November 30, 2001, Southern Natural Gas Company (Southern) filed to eliminate the GSR

cost recovery provisions from its tariff to be effective January 1, 2002.

Southern also indicates, based on estimated data, a GSR surcharge refund for GSR overcollections during 2001 will be made on or before March 31, 2002 in the amount of approximately $275,000.

Southern states that copies of the filing were served upon Southern's customers, intervening parties 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30575 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–63–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective January 1, 2002:

126 Revised Sheet No. 5
31 Revised Sheet No. 5A
23 Revised Sheet No. 5A.02
23 Revised Sheet No. 5A.03
28 Revised Sheet No. 5B

Transwestern states that the purpose of this filing is to set forth the approved 2002 Gas Research Institute (GRI) surcharges for the 2002 calendar year to be effective January 1, 2002 in accordance with the Commission's Order approving The Gas Research Institute's Year 2002 Research, Development and Demonstration Program and 2002–2 006 Five-Year Plan issued on September 19, 2001 in Docket No. RP01–434–000.

Transwestern states that copies of the filing were served upon Transwestern's 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, N.E., Washington, D.C. 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30557 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–76–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 29, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Twentieth Revised Sheet No. 6A, to become effective January 1, 2002.

Williams states that pursuant to Order Approving Settlement, issued April 29, 1998, in Docket No. RP97–149–003, et al. as modified by the Commission's Order dated September 19, 2001, in Docket No. RP01–434–000 and Williams FERC Gas Tariff, Original Volume No. 1, Article 25 of its General Terms and Conditions, Williams is filing to reflect the new GRI surcharges to be collected on nondiscounted transportation services.

Williams states that copies of this filing have been served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30567 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–78–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

December 5, 2001.

Take notice that on November 30, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective January 1, 2002:

Second Revised Volume No. 1

Forty-Fourth Revised Sheet No. 15
Forty-Fifth Revised Sheet No. 16
Forty-Third Revised Sheet No. 18
Thirty-Ninth Revised Sheet No. 21

Original Volume No. 2

Eighty-Eighth Revised Sheet No. 11B

Williston Basin states the proposed tariff sheets are being filed to incorporate the Gas Technology Institute (GTI) General Research, Development and Demonstration Funding Unit Adjustment Provision for 2002.

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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30569 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–79–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2001.

Take notice that on November 30, 2001, Williston Basin Interstate Pipeline Company (Williston Basin or Company), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 30, 2001:

Ninth Revised Sheet No. 5
Seventh Revised Sheet No. 6
Seventh Revised Sheet No. 6A
Fourth Revised Sheet No. 7
Seventh Revised Sheet No. 8
Eighth Revised Sheet No. 9
Sixth Revised Sheet No. 10

Williston Basin is proposing to amend its tariff to eliminate the display of its system maps. Williston Basin requests that the Commission grant waiver of section 154.106 of the Commission regulations requiring the display of system maps in a pipeline's FERC Gas Tariff.

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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30570 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–27–001, et al.]

LG&E Power Inc., et al.; Electric Rate and Corporate Regulation Filings

December 4, 2001.

Take notice that the following filings have been made with the Commission:

1. LG&E Power Inc., American Power, Incorporated, and Progress Ventures, Inc.

[Docket No. EC02–27–001]

Take notice that on November 21, 2001, LG&E Power Inc., American Power, Incorporated (Sellers) and progress Ventures, Inc., (Buyer) (collectively, the Applicants) submitted certain additional material described in their November 19, 2001 filing in the captioned proceeding asking for Commission authorization pursuant to the provisions of section 203 of the Federal Power Act for a transaction under which the Buyer would acquire from the Sellers certain jurisdictional facilities associated with Sellers' sale to Buyer of the limited liability company membership interests of LG&E Power Monroe LLC.

The Applicants state that copies of this additional material were served on the Georgia Public Service Commission, North Carolina Utilities Commission, South Carolina Public Service Commission and the Florida Public Service Commission, who were also recipients of the November 19, 2001 filing.

Comment date: January 18, 2002, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER01–833–000]

Take notice that on November 30, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Further Request for Deferral of Consideration of the unexecuted Wholesale Distribution Tariff (WDT) Service Agreement and Interconnection Agreement between Pacific Gas and Electric Company and Modesto Irrigation District (MID) filed in FERC Docket No. ER01–833–000 on December 29, 2000. PG&E and Modesto are finalizing the WDT Service Agreement and a letter agreement for review and signature, and PG&E therefore is notifying the Commission that executed agreements will not be filed by November 30, 2001, the requested deferral date.

PG&E requests that the Commission defer consideration of the proceedings filed in ER01–833–000 to February 28, 2002, 90 days beyond the last request for Deferral in order that the parties may finalize and executed the Agreements.

Copies of this filing have been served upon MID, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–330–001]

Take notice that on November 30, 2001, the Alliant Energy Corporate Services, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) to hold in abeyance the Alliant Energy Corporate Services, Inc.'s proposed Notice of Cancellation and revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1, which was filed on November 14, 2001, in the Docket No. indicated above.

Alliant Energy Corporate Services, Inc. has served copies of its filing by placing a copy of same in the United States mail, first-class postage prepaid, to customers under it OATT, the Illinois Commerce Commission, Iowa Department of Commerce, Minnesota Public Utilities Commission and the Public Service Commission of Wisconsin.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. PJM Interconnection, L.L.C.

[Docket No. ER02–235–001]

Take notice that on November 29, 2001, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a correction and an additional conforming change to the revisions to the PJM Open Access Transmission Tariff (PJM Tariff) that were filed in this proceeding on November 1, 2001 (November 1 Filing). PJM states that one of the PJM Tariff sheets submitted with the November 1 Filing contained calculation errors in two of the figures on the sheet and that the Commission's November 20, 2001 letter order in Docket No. ER99–396–000 requires a conforming change to the post-January 1, 2002 version of the PJM Tariff. Copies of this filing have been served on all PJM Members and the state electric regulatory commissions in the PJM control area.

PJM requests an effective date of January 1, 2002, which is the PJM West implementation date and the same effective date as the tariff amendments in the November 1 Filing.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER01–3124–001]

Take notice that PacifiCorp on November 29, 2001, tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with 18 CFR 35 of the Commission's Rules and Regulations and in compliance with the Commission's Order dated November 21, 2001 under FERC Docket No. ER01–3124–000 Mutual Netting/Settlement Agreements. These Netting Agreements were previously accepted for filing and are being resubmitted with the appropriate header and footer information as required in Order 614.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Wellhead Power Panoche, LLC

[Docket No. ER01–3118–001]

Take notice that on November 29, 2001, Wellhead Power Panoche, LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) a response to the Commission's Letter Order issued on November 21, 2001 in Docket No. ER01–3118–000 and tendered for filing an amended market-based rate schedule under Section 205 of the Federal Power Act in order to comply with the Federal Energy Regulatory Commission's Order Establishing Refund Effective Date and Proposing to Revise Market-Based Rate Tariffs and Authorization issued on November 20, 2001 in Docket No. EL01–118.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Wellhead Power Gates, LLC

[Docket No. ER01–3117–001]

Take notice that on November 29, 2001, Wellhead Power Gates, LLC (Applicant) responded to the Federal Energy Regulatory Commission (Commission) Letter Order issued on November 21, 2001 in Docket No. ER01–3117–000 and tendered for filing an amended market-based rate schedule under Section 205 of the Federal Power Act in order to comply with the Federal Energy Regulatory Commission's Order Establishing Refund Effective Date and Proposing to Revise Market-Based Rate Tariffs and Authorization issued on November 20, 2001 in Docket No. EL01–118.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Renaissance Power, L.L.C.

[Docket No. ER01–3109–001]

Take notice that on November 30, 2001, Renaissance Power, L.L.C. (Renaissance) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Rule 205, 18 CFR 385.205, a revised FERC Electric Tariff No. 1 in compliance with the Commission's letter order dated November 20, 2001 in the above docket, which required Renaissance to include a provision in its tariff prohibiting power purchases from franchised public utility affiliates.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. FPL Energy Marcus Hook, L.P.

[Docket No. ER01–2929–001]

On November 30, 2001, FPL Energy Marcus Hook, L.P. (the Applicant), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited partnership engaged directly and exclusively in the business of developing and operating an approximately 740 MW generating facility to be located in Marcus Hook, Pennsylvania. Electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Rock River I, LLC

[Docket No. ER01–2742–001]

Take notice that on November 28, 2001, Rock River I, LLC (Rock River) filed with the Federal Energy Regulatory Commission (Commission) informing the Commission of a change in status as a result of a change in its upstream corporate ownership. Rock River is the owner of a wind energy generating facility located in Carbon County, Wyoming and is interconnected with the system of PacifiCorp.

Comment date: December 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER02–212–001]

Take notice that on November 29, 2001, PJM Interconnection, L.L.C. (PJM), submitted corrections to the amendments to Schedule 2 of the PJM Open Access Transmission Tariff (PJM Tariff) that were submitted in this docket on October 31, 2001 (October 31 Filing). PJM states that the corrections are required to correct two calculation errors in the monthly reactive power service revenue requirements submitted with the October 31 filing. Copies of this filing were served upon all PJM members and the state electric regulatory commissions in the PJM control area.

PJM requests an effective date of January 1, 2002 for the corrections, to conform to the effective date requested for the PJM Tariff amendments submitted with the October 31 filing.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. ISO New England Inc.

[Docket No. ER01–3086–001]

Take notice that on December 1, 2001, ISO New England Inc. submitted as a compliance report on its Load Response Program and the addition of new generation in New England in the above Docket.

Comment date: December 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Sithe Edgar LLC, Sithe New Boston LLC, Sithe Farmingham Llc, Sithe West Medway LLC, Sithe Mystic LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., Sithe Power Marketing, L.P., and Sithe Power Marketing, Inc.

[Docket No. ER01–513–002]

Take notice that on November 30, 2001, the above referenced entities filed with the Federal Energy Regulatory Commission (Commission) the rate schedule designations for their FERC Electric Schedules Nos. 1 and 2, in compliance with Order No. 614.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket Nos. ER97–2353–006]

Take notice that on November 30, 2001, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to its September 15, 2001 Compliance Filing in the above docket to supply additional information requested by the Federal Energy Regulatory Commission (Commission) in its October 30, 2001 letter in the above-captioned dockets.

Copies of the filing have been served on all parties listed on the official service list maintained by the Secretary of the Commission in the above docket.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Dynegy Power Marketing, Inc., Illinova Energy Partners, Inc., Dynegy Power Services, Inc., Illinois Power Company, El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, Rockingham Power, LLC, Rocky Road Power, LLC, Dynegy Midwest Generation, Inc., Calcasieu Power, LLC, Dynegy Danskammer, L.L.C., Dynegy Roseton, L.L.C., Heard County Power L.L.C., Riverside Generating Company, L.L.C., and Nicor Energy, LLC

[Docket Nos. ER99–4160–002, ER94–1475–020, ER94–1612–025, ER99–3322–001, ER98–1127–004, ER98–1796–003, ER99–1115–004, ER99–1116–004, ER99–1567–001, ER99–2157–001, ER00–1895–001, ER00–1049–002, ER01–140–001, ER01–141–001, ER01–943–001, ER01–1044–001, and ER01–1169–001]

Take notice that on November 30, 2001, Dynegy Inc., on behalf of the above-noted entities, filed with the Federal Energy Regulatory Commission (Commission) a withdrawal of the notification of change in status previously filed with the Commission on November 16, 2001.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30548 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Teleconference Meeting for the Big Creek No. 4, Project, P–2017

December 5, 2001.

a. *Date and Time of Meeting:* December 19, 2001, 1:00 PM EST to 3:30 PM EST.

b. *Place:* By copy of this notice we are inviting interested parties to participate in a teleconference from their telephone location. If anyone wishes to participate, they need to call 1–888–730–9139. The participants will need to give the operator the conference leader's name: John Ramer and the passcode: Ramer.

c. *FERC Contact:* John Ramer at (202) 219–2833; *john.ramer@FERC.Fed.US* or John Smith at (202) 219–2460; *john.smith@FERC.Fed.US.*

d. *Purpose of the Meeting:* The Federal Energy Regulatory Commission and the U.S. Forest Service, Sierra National Forest, intend to discuss the Forest Service's 4(e) conditions for the Big Creek No. 4 Project, FERC Project No. 2017.

e. *Proposed Agenda:*

A. Clarification of Forest Service section 4(e) terms and conditions

B. FERC's Schedule for issuing the Final Environmental Impact Statement

f. All local, state, and Federal agencies, Indian Tribes, and interested parties, are hereby invited to participate in this meeting. If you want to participate by teleconference, please contact John Ramer or John Smith at the numbers listed above no later than December 14, 2001.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30553 Filed 12–10–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7115–3]

Notice of Deficiency for Clean Air Act Operating Permit Program in Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority at 40 CFR 70.10, EPA is publishing this Notice of Deficiency (NOD) for the State of Michigan's Clean Air Act title V operating permit program. The NOD is based upon EPA's finding that the state's requirements for administrative permit amendments do not comply with the requirements of 40 Code of Federal Regulations (CFR) part 70 and the Act. Publication of this document is a prerequisite for withdrawal of the state's title V program approval, but EPA is not withdrawing this program through this action.

EFFECTIVE DATE: November 30, 2001. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30 day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, EPA Region 5 (AR–18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 886–2703, *valenziano.beth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). Sierra Club and the New York Public Interest Research Group challenged the action. In settling the litigation, EPA agreed to publish a document in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged deficiencies in title V programs. The EPA published that document on December 11, 2000. 65 FR 77376.

As stated in the **Federal Register** document, EPA agreed to respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA agreed to respond by April 1, 2002 to timely comments on fully approved programs. The EPA is publishing a NOD if the Agency determines that a deficiency exists, and is notifying the commenter in writing to explain the reasons for not making a finding of deficiency on other issues. The EPA received two timely comment letters pertaining to the Michigan title V program. In reviewing the commenters' concerns, EPA agrees that one commenter has identified a deficiency in Michigan's title V operating permit program relating to the state's administrative permit amendment regulations. The EPA is addressing that deficiency in this document. In addition, the commenters raised other issues that EPA has determined are not deficiencies. The EPA is responding to the commenters in writing, explaining the basis for EPA's decision.

Under EPA's permitting regulations, citizens may, at any time petition EPA regarding alleged deficiencies in state title V operating permit programs. In addition, EPA may on its own identify deficiencies. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD.

II. Description of Action

The EPA is publishing this NOD to notify the state of Michigan and the public that EPA has found a deficiency in the Michigan title V operating permit program. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a state's title V permitting program no longer complies with the requirements of 40 CFR part 70 and the Clean Air Act (Act). The deficiency being noticed today relates to Michigan's regulatory authority to grant a permit shield from enforcement for certain administrative amendments.

The EPA's regulations at 40 CFR 70.7(d)(4) do not allow a state operating permit program to grant a permit shield for the following administrative permit amendments specified in 40 CFR 70.7(d)(1)(i)–(iv): a change that corrects typographical errors; a change in the name, address or phone number of the responsible official or other contact person; a change that provides for more frequent monitoring and reporting; and a change in the ownership or operational control of a source where no other changes to the permit are necessary. However, Michigan's rules allow a permit shield for such amendments. Specifically, Michigan Rule (R) 336.1216(1)(b)(iii) provides that the permit shield as described in 40 CFR 70.6(f) and R 336.1213(6) applies to administrative amendments made pursuant to R 336.1216(a)(i) through (iv) once the changes have been approved by the Michigan Department of Environmental Quality (MDEQ). R 336.1216(a)(i) through (iv) allows administrative amendments for the changes specified in 40 CFR 70.7(d)(1)(i) through (iv). Because Michigan's rules impermissibly allow for a permit shield for these administrative amendments, the state's program does not comply with the requirements of the Act and 40 CFR part 70.

Title V provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements for revising operating permits, including administrative amendments. 40 CFR 70.4(b)(16); *see* 40 CFR 70.7(d). Part 70 further provides that a permitting authority may grant a permit shield only in certain circumstances. 40 CFR 70.6(f) and 70.7(d)(4).

40 CFR 70.4 and 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1)(i) lists a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority does not meet the requirements of 40 CFR part 70.

40 CFR 70.10(b), which sets forth the procedures for program withdrawal, requires as a prerequisite to withdrawal that the EPA Administrator notify the permitting authority of any finding of deficiency by publishing a document in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of deficiency. According to 40 CFR 70.10(b)(2), if Michigan has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after issuance of this notice of deficiency, EPA may withdraw the state program, apply any of the sanctions specified in section 179(b) of the Act, and/or promulgate, administer, and enforce a federal title V program. 40 CFR 70.10(b)(3) provides that, if the state has not corrected the deficiency within 18 months after the date of the finding of deficiency and issuance of the NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. In addition, 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of the finding of

deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding. The sanctions will go into effect unless the state has corrected this deficiency within 18 months after signature of this document.

This document is not a proposal to withdraw the state's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days to determine whether the state has taken significant action to correct the deficiency.

III. EPA Responses to Citizen Comments

As discussed above, EPA is responding in writing to all timely comments that citizens submitted pursuant to the settlement agreement. For all comments not resulting in an NOD, EPA is responding directly to the commenter, explaining the reasons why EPA did not find that an NOD was warranted. EPA Region 5 will also post its response letters on the Internet at *http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments.* EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. Finally, EPA will publish a national notice of availability in the **Federal Register** notifying the public that EPA has responded in writing to the commenters and explaining how the public may obtain a copy of EPA's responses.

IV. Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of today's action may be filed under the United States Court of Appeals for the appropriate circuit within 60 days of December 11, 2001.

(Authority: 42 U.S.C. 7401–7671q.)

Dated: November 30, 2001.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 01–30451 Filed 12–6–01; 3:44 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7115–2]

Notice of Deficiency for Clean Air Act Operating Permit Program in Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority at 40 CFR 70.10, EPA is publishing this Notice of Deficiency (NOD) for the State of Indiana's Clean Air Act title V operating permit program. The NOD is based upon EPA's finding that several state requirements do not meet the minimum federal requirements of 40 CFR part 70 and the Act for program approval. Publication of this document is a prerequisite for withdrawal of Indiana's title V program approval, but EPA is not withdrawing the program through this action.

EFFECTIVE DATE: November 30, 2001. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, EPA Region 5 (AR–18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–3189, E-mail Address: portanova.sam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). Sierra Club and the New York Public Interest Research Group challenged the action. In settling the litigation, EPA agreed to publish a document in the **Federal Register**, giving the public the opportunity to identify and bring to EPA's attention alleged deficiencies in title V programs. EPA published that document on December 11, 2000. 65 FR 77376.

As stated in the **Federal Register** document published on December 11, 2000 (65 FR 77376), EPA is responding by December 1, 2001 to timely public comments on programs that have obtained interim approval; and by April 1, 2002 to timely comments on fully approved programs. The EPA is publishing a NOD if the Agency determines that a deficiency exists, and is notifying the commenter in writing to explain the reasons for determining that other issues do not constitute a deficiency in the Indiana title V program. The EPA received two timely comment letters pertaining to the Indiana title V program. In reviewing the commenters' concerns, EPA determined that one commenter did identify deficiencies in Indiana's title V operating permit program.

II. Description of Action

EPA recognizes that the Indiana Department of Environmental Management (IDEM) has made an expeditious effort to correct the regulatory deficiencies identified by the commenter. These Indiana regulatory revisions, however, will not become effective until after December 1, 2001. Therefore, the EPA is publishing a NOD for Indiana's Clean Air Act (Act) title V program. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a state's title V permitting program no longer complies with the requirements of 40 CFR part 70 and the Act. The deficiencies being noticed are listed below. Because of IDEM's efforts to address these deficiencies as expeditiously as possible, EPA expects these regulatory deficiencies to be corrected by March 2002.

Under EPA's permitting regulations, citizens may, at any time, petition EPA regarding alleged deficiencies in state title V operating permitting programs. In addition, EPA may identify deficiencies on its own. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD.

1. Permit Shield

Under the Indiana title V program, minor permit modifications, which are not subject to public review, qualify for a title V permit shield. This is not consistent with 40 CFR 70.7(e)(2)(vi), which provides that ''the permit shield under 70.6(f) of this part may not extend to minor permit modifications.'' During EPA's original review of Indiana's title V program, which resulted in granting interim approval on November 14, 1995, the Indiana regulations required minor modifications to be subject to public review equivalent to that required by 40 CFR 70.6, 70.7 and 70.8, and allowed such modifications to qualify for a permit shield. In reviewing that original regulation, EPA determined that the permit shield was acceptable in this situation because of the availability of public review. Subsequent to the November 14, 1995, interim approval, Indiana modified its regulations to remove the public notice requirement from the minor modification provision. However, the state did not remove the permit shield provision. Because Indiana's rules allow for a permit shield for these minor modifications, the state's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this provision to re-instate the public review requirements for minor modifications. Indiana will revise 326 IAC 2–7–12(b)(4) of the state regulations to require that minor permit modifications go through public review.

2. Compliance Certification With Alternative or Streamlined Limits

Indiana rule 326 IAC 2–7–4(c)) allows sources to certify compliance with alternative or streamlined requirements instead of original applicable requirements. For the initial compliance certifications submitted with permit applications, part 70 does not allow sources to certify compliance with alternative or streamlined requirements instead of the applicable requirements. EPA's March 5, 1996, memorandum entitled ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program'' states that a permitting authority may combine underlying applicable requirements into one streamlined permit term provided that the source's compliance with the streamlined term guarantees that the source is also in compliance with all underlying applicable requirements. Indiana's regulations currently only require sources to certify compliance with streamlined terms. Indiana must revise its regulations to further require sources to certify compliance with the underlying applicable requirements. We encourage states to use EPA guidance documents in implementing the title V program. When applying those guidance documents, however, a state must assure that its program is consistent with 40 CFR part 70.

Because Indiana's rules allow for compliance certification with alternative or streamlined limits, the state's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this rule provision. Indiana will remove language from 326 IAC 2–7–4(c) which allows compliance certification with alternative or streamlined limits.

3. Supersession

Indiana's construction permits expire upon issuance of a valid title V permit; therefore, the construction permit conditions do not exist independently of title V permits. Permit conditions in previously issued permits must exist independently of title V permits. Allowing the basis for these conditions to expire could cause Indiana to lose the authority to include such conditions in renewed title V permits. Because Indiana's rules do not assure that construction permit conditions exist independently of title V permits, the state's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of revising 326 IAC 2–1.1–9.5 which will address this deficiency by stating that any condition identified as having been established in a permit issued pursuant to a State Implementation Plan-approved permit program will remain in effect even if the original construction permit expires.

4. Operating Parameter Exceedances

Indiana rule 326 IAC 2–7–5(1)(E) considers an exceedance of a permit limit and the corresponding operating parameter as only one violation. This rule provision restricts the state's enforcement authority to restrain or enjoin and to assess a civil penalty for the violation of any permit condition as required by 40 CFR 70.11. Therefore, Indiana's program does not meet the program requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this rule provision. Indiana will remove this language from its rules by deleting paragraph 326 IAC 2–7–5(1)(E).

5. Startup, Shutdown, and Malfunction Exceedances

Indiana rule 326 IAC 2–7–5(1)(F) allows the state to address emission limit exceedances for startups, shutdowns, and malfunctions on a case-by-case basis in title V permits. This allows the permitting authority to establish through the title V permitting process limits which exceed applicable requirements. Because title V does not give permitting authorities the authority to establish new emission limits, Indiana's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this rule provision. Indiana will remove this language from its rules by deleting paragraph 326 IAC 2–7–5(1)(F).

6. Emission Levels

a. Sulfur Dioxide, Nitrogen Oxides, Carbon Monoxide, Volatile Organic Compounds, and Lead Exemption Levels

Indiana rule 326 IAC 2–1.1–3(d) allows the state to exempt from the title V minor or significant modification requirements sulfur dioxide, nitrogen oxides (NO_X), and volatile organic compound (VOC) emission increases of up to 10 tons per year and carbon monoxide emission increases of up to 25 tons per year. In addition, 326 IAC 2–1.1–3(g) allows the state to exempt from the title V minor or significant modification requirements lead emissions increases of up to 5 tons per year. Because 40 CFR 70.6(e) does not allow the permitting authority to create exemptions from the permit modification requirements, Indiana's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this deficiency. Indiana will remove language from 326 IAC 2–1.1–3(d) and 326 IAC 2–1.1–3(g) which apply these provisions to title V sources and title V modifications.

b. NO_X and VOC Insignificant Activity Threshold

The definition of insignificant activity in the Indiana rule (326 IAC 2–7–1(21)(A)) does not include specific insignificant activity threshold levels for NO_X and VOC. The rule refers to the limits in 326 IAC 2–1.1–3(d)(1) to establish the insignificant activity threshold levels for these two pollutants. The threshold levels in this provision are 10 tons per year for both NO_X and VOC. EPA considers this an unacceptably high threshold for insignificant activities and, as a result, Indiana's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this deficiency. Indiana will revise 326 IAC 2–7–1(21)(A) to establish a VOC insignificant activity threshold of 3 pounds per hour or 15 pounds per day and a NO_X insignificant activity threshold of 5 pounds per hour or 25 pounds per day. These threshold levels will be equivalent to the VOC and NO_X thresholds that EPA approved as part of Indiana's original title V program.

7. Conclusion

Title V provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. 40 CFR 70.4(k) and 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1)(i) lists a number of potential bases for program withdrawal, including failure of the permitting authority's legal authority to meet the requirements of 40 CFR part 70.

40 CFR 70.10(b), which sets forth the procedures for program withdrawal, requires as a prerequisite to withdrawal that EPA Administrator notify the permitting authority of any finding of deficiency by publishing a document in

the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of deficiency. According to 40 CFR 70.10(b)(2), if Indiana has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of this notice of deficiency, EPA may withdraw the state program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a federal title V program. 40 CFR 70.10(b)(3) provides that, if a state hasn't corrected the deficiency within 18 months after the date of the finding of deficiency and issuance of the NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. In addition, 40 CFR 70.10(b)(4) provides that, if the state hasn't corrected the deficiency within 18 months after the date of the finding of deficiency, EPA will promulgate, administer and enforce a whole or partial program within 2 years of the date of the finding. The sanctions will go into effect unless the state has corrected this deficiency within 18 months after signature of this document.

Since Indiana has made an expeditious effort to correct the deficiencies outlined in this document and has significantly completed the rulemaking process to correct these deficiencies, EPA considers the state to already have taken significant action to assure adequate administration and enforcement of the program. In fact, EPA expects Indiana's corrections to the deficiencies outlined in this document to be completed and in effect within 90 days after publication of this notice of deficiency.

III. EPA Responses to Citizen Comments

As discussed above, EPA is responding in writing to all timely comments that citizens submitted pursuant to the settlement agreement. For all comments not resulting in a NOD, EPA will explain the reasons why EPA found that a NOD was not warranted. EPA Region 5 will also post its response letters on the Internet at *http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments.* EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin.

IV. Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of December 11, 2001.

(Authority: 42 U.S.C. 7401–7671q.)

Dated: November 30, 2001.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 01–30452 Filed 12–6–01; 3:44 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7115–5]

Federal NO_X Budget Trading Program: Applicability Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of applicability determination under Federal NO_X Budget Trading Program.

SUMMARY: EPA established 40 CFR part 97, the Federal NO_X Budget Trading Program (''the Program''), to reduce interstate transport of ozone under section 126 of the Clean Air Act (''section 126''). The Program applies to existing or new large electric generating units (''EGU's'') and large non-EGU's (as defined at 40 CFR 52.34) in states subject to section 126. EPA finds, in an applicability determination dated November 30, 2001, that Point 30 at Weirton Steel Corporation's Plant 0001 in West Virginia is not subject to the Program because it is not a ''boiler,'' ''combustion turbine,'' or ''combined cycle system'' under 40 CFR 97.2. Since Point 30 is not subject to the Program, NO_X allowances will not be allocated for this unit in EPA's NO_X Allowance Tracking System.

DATES: Any comments regarding this applicability determination must be submitted in writing to EPA at the address below no later than January 10, 2002.

ADDRESSES: U.S. EPA, Clean Air Markets Division (6204N), Attn: Robert Miller, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Miller, U.S. EPA Headquarters, Clean Air Markets Division, (202) 564–9077.

Dated: November 30, 2001.

Brian J. McLean.

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 01–30585 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7115–4]

Notice of Prevention of Significant Deterioration (PSD) Final Determination for DPL Energy Montpelier Electric Generating Station, Wells County, IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on March 13, 2001, the Environmental Appeals Board (EAB) of the EPA dismissed a petition for review of a permit issued for DPL Energy Montpelier Electric Generating Station in Wells County, Indiana by the Indiana Department of Environmental Management (IDEM) pursuant to the State of Indiana's approved minor source New Source Review (NSR) permit program.

DATES: The effective date for the EAB's decision is March 13, 2001. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of December 11, 2001.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Julie Capasso at (312) 886–1426.

FOR FURTHER INFORMATION CONTACT: Julie Capasso, United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604, telephone (312) 886–1426. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/disk11/montpelier.pdf.*

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action is EPA Taking?
B. What is the Background Information?
C. What did EPA Determine?

A. What Action Is EPA Taking?

We are notifying the public of a final decision by EPA's EAB on a permit issued by IDEM pursuant to the State of Indiana's approved minor source (NSR) permit program.

B. What Is the Background Information?

On December 29, 2000, IDEM issued a ''New Source Construction Permit and Minor Source Operation Permit'' which authorizes the construction and operation of [8] Twin Pac combustion turbine units, which consist of 16 simple cycle combustion turbines and [8] electric generators. The Permit restricts allowable emissions of any regulated pollutant to no more than 249 tons per year and was issued pursuant to the state's minor source new source review (''NSR'') permit program. In issuing the Permit, IDEM did not in any way invoke its permit-issuing authority pursuant to the prevention of significant deterioration (''PSD'') program that it administers in the state as a federal delegatee.

On January 23, 2001, Stephen A. Loeschner filed a petition contending that IDEM should have issued a federal PSD permit to DPL Energy rather than a minor source NSR permit because, according to Petitioner, the proposed DPL Energy facility, which Petitioner characterizes as a fossil fuel-fired steam electric plant and which has the potential to emit more than 100 tons per year of any air pollutant, is a major emitting facility and, thus, requires a PSD permit.

On February 14, 2001, IDEM filed a Motion for Summary Disposition with the EAB, in which IDEM asserted that the EAB lacked jurisdiction to review the DPL Energy minor source permit. DPL Energy also filed a motion seeking summary disposition on the same grounds. The Office of General Counsel and Office of Regional Counsel in Region 5 filed an amicus curiae brief maintaining that the EAB lacked jurisdiction in this matter.

C. What Did the EAB Determine?

On March 13, 2001, the EAB denied the petition for review for lack of jurisdiction. The EAB explained that none of the sources of the Board's authority to review permit determinations confers jurisdiction on the Board for the sole purpose of reviewing permits issued under an approved minor source NSR program of any state. See In re Carlton, Inc., North Shore Power Plant, PSD Appeal 00–9 [ADMIN. MAT. 41236] (EAB, Feb. 28, 2001), 9 E.A.D. It therefore follows that the Board does not have jurisdiction to review the minor source permit issued by IDEM to DPL Energy. Also, since Carlton further instructs that the Board's jurisdiction to review PSD permits ''is limited to federal PSD permits that are actually issued,'' it necessarily follows that a state decision not to issue a PSD permit (in contrast to a state decision to deny a PSD permit under a federal program) is not a reviewable decision by the Board.

Dated: November 28, 2001.

Bertram C. Frey,

Acting Regional Administrator, Region 5.

[FR Doc. 01–30593 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7115–9]

Interagency Project To Clean Up Open Dumps on Tribal Lands: Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Tribal Solid Waste Interagency Workgroup (Workgroup) is soliciting proposals for its fourth year of the Tribal Open Dump Cleanup Project (Project). In FY01, the Workgroup made more than $2.8 million available to fully or partially fund 16 selected projects. Each of these projects will result in the closure or upgrade of one or more open dumps located on tribal lands. We are projecting a similar amount of funding for FY02. The Cleanup Project is part of a federal effort to help tribes comprehensively address their solid waste needs. The purpose of the Cleanup Project is to assist with closing or upgrading tribal high-threat waste disposal sites and providing alternative disposal and integrated solid waste management.

The Workgroup was established in April 1998 to coordinate federal assistance to tribes in bringing their waste disposal sites into compliance with the municipal solid waste landfill criteria (40 CFR part 258). Current Workgroup members include representatives from the U.S. Environmental Protection Agency (EPA); the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); the Bureau of Land Management; the departments of Agriculture, Defense, and Housing and Urban Development; and the National Oceanic and Atmospheric Administration.

Criteria: Eligible recipients of assistance under the Cleanup Project include federally recognized tribes and intertribal consortiums. A full explanation of the submittal process, the qualifying requirements, and the criteria that will be used to evaluate proposals for this project may be found in the Request for Proposals package.

DATES: For consideration, proposals must be received by close of business on January 31, 2002. Proposals postmarked on or before but not received by the closing date will not be considered. Please do not rely solely on overnight mail to meet the deadlines.

FOR FURTHER INFORMATION: Copies of the Request for Proposals package may be downloaded from the Internet at <*www.epa.gov/tribalmsw*> by clicking on ''What's New.'' Copies may also be obtained by contacting EPA, IHS or BIA regional or area offices or one of the following Workgroup representatives:

EPA—Melanie Barger Garvey, 202–564–2579, Christopher Dege, 703–308–2392, or Tonya Hawkins, 703–308–8278.

IHS—Steve Aoyama, 301–443–1046.

BIA—Debbie McBride, 202–208–3606.

Dated: November 30, 2001.

ELIZABETH A. COTSWORTH,

Director, Office of Solid Waste.

[FR Doc. 01–30589 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7117–1]

Cape Fear Wood Preserving Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with SECO Investments, Inc. pursuant to 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, regarding the Cape Fear Wood Preserving Superfund Site located in Fayetteville, Cumberland County, North Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30)

calendar days of the date of this publication.

Dated: November 9, 2001.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 01–30592 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7117–2]

Crestline Contaminated Wells Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with the North Carolina Department of Transportation pursuant to 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, regarding the Crestline Contaminated Wells Superfund Site located in Aberdeen, Moore County, North Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: November 9, 2001.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 01–30591 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7116–8]

Proposed CERCLA 122(h) Administrative Agreement for Recovery of Past Costs for the Ramapo Landfill Superfund Site, Town of Ramapo, Rockland County, NY

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 of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed administrative agreement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Ramapo Landfill Superfund Site (''Site'') located in the Town of Ramapo, Rockland County, New York, with the following settling parties: Allied Waste Systems, Inc. (for itself and as alleged successor to Valley Carting Corp.); American Home Products Corporation; Avon Products, Inc.; Beazer East, Inc. (formerly known as Koppers Industries, Inc.); Ford Motor Company; Carmine Franco; Good Samaritan Hospital; International Business Machines Corporation; International Paper Company; Lederle Laboratories, Inc.; Nepera, Inc.; Orange and Rockland Utilities, Inc.; Pneumo Abex Corporation; Ramapo Land Co., Inc.; and Waste Management of New York LLC (as alleged successor to Marangi Brothers, Inc.). The settlement requires the settling parties jointly and severally to pay $222,180.84 in reimbursement of EPA's past costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate.EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before January 10, 2002.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Ramapo Landfill Superfund Site located in the Town of Ramapo, Rockland County, New York, Index No. CERCLA–02–2002–2005. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3168.

Dated: November 27, 2001.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 01–30590 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7115–6]

Clean Water Act Section 303(d): Availability of Total Maximum Daily Load (TMDLs) and Determinations That TMDLs Are Not Needed; Public Comment Continuation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period continuation.

SUMMARY: This notice announces the continuation of the public comment period for the TMDLs published in **Federal Register** and the determinations that TMDLs are not needed, published on October 15, 2001 at 66 FR 52403–52404. These TMDLs were completed in response to a court order dated October 1, 1999, in the lawsuit *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.).

DATES: Comments must be submitted for these TMDLs published 10/15/2001 (dissolved oxygen, nutrients, and ammonia) in writing to EPA on or before December 21, 2001.

ADDRESSES: Comments on the TMDLs and the determinations that TMDLs are not needed should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at

(214) 665–7513. The administrative record file for these TMDLs and the determinations that TMDLs are not needed are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *www.epa.gov/region6/water/tmdl.htm,* or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Among other claims the plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. Discussion of the court's order may be found at 65 FR 54032 (September 6, 2000).

EPA will review all data and information submitted during the continued public comment period and revise the TMDLs and determinations that TMDLs are not necessary where appropriate. EPA will then forward the TMDLs to the Court and the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the TMDLs into its current water quality management plan. EPA also will revise the Louisiana 303(d) list as appropriate.

Dated: November 29, 2001.

Jayne Fontenot,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 01–30586 Filed 12–10–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 27, 2001.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. McCreary Bancshares, Inc., Employee Stock Ownership Plan, the related trust, and its trustees, Whitley City, Kentucky; to acquire voting shares of McCreary Bancshares, Inc., Whitley City, Kentucky, and thereby indirectly acquire voting shares of Bank of McCreary County, Whitley City, Kentucky.

Board of Governors of the Federal Reserve System, December 5, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–30511 Filed 12–10–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to merge with Mid–America Bancorp, Louisville, Kentucky, and thereby indirectly acquire Bank of Louisville, Louisville, Kentucky. In addition, Applicant also is seeking permission to exercise an option to acquire up to 19.9 percent of the voting shares of Mid–America Bancorp under certain circumstances.

In connection with this application, Applicant also has applied to acquire Mid–America Gift Certificate Company, Louisville, Kentucky, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y; MABC Leasing Co., Louisville, Kentucky, and thereby engage in leasing activities, pursuant to § 225.28(b)(3) of Regulation Y; and MAB Investment Group, Inc., Louisville, Kentucky, and thereby engage in investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

2. BB&T Corporation, Winston-Salem, North Carolina; to merge with AREA Bancshares Corporation, Owensboro, Kentucky, and thereby indirectly acquire AREA Bank, Owensboro, Kentucky, and The Vine Street Trust Company, Owensboro, Kentucky. In addition, Applicant also is seeking permission to exercise an option to acquire up to 19.9 percent of the voting shares of AREA Bancshares Corporation under certain circumstances.

In connection with this application, Applicant also has applied to acquire AREA Trust Company, Owensboro, Kentucky, and thereby engage in trust activities, pursuant to § 225.28(b)(5) of Regulation Y, and AREA Services, Inc., Owensboro, Kentucky, and thereby engage in discount brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Morton Bancorp, Inc., Morton, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Morton, Morton, Mississippi.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Bryan Family Management Trust, Bryan, Texas, and Bryan Heritage

Limited Partnership, Bryan, Texas; to acquire 51 percent of the voting shares of The First National Bank of Bryan, Bryan, Texas.

Board of Governors of the Federal Reserve System, December 5, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–30512 Filed 12–10–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire Gateway Investment Services, Inc., Los Angeles, California, and thereby engage in securities brokerage activities pursuant to section 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–30510 Filed 12–10–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System Federal Register Citation of Previous Announcement: 66 FR 63059, December 4, 2001.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, December 7, 2001.

CHANGES IN THE MEETING: The open meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 7, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30663 Filed 12–7–01; 11:23 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0510]

Draft Guidance for Industry on Integration of Dose-Counting Mechanisms Into MDI Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Integration of Dose-Counting Mechanisms into MDI Drug Products.'' This draft guidance makes recommendations to manufacturers to incorporate dose-counters into metered-dose inhalers (MDIs) being developed for the treatment of lung diseases. The recommendations made in this draft guidance are intended to enhance the use of MDIs, specifically to help patients identify when MDIs are no longer delivering reliable doses.

DATES: Submit written or electronic comments on the draft guidance by February 11, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sandra L. Barnes, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Integration of Dose-Counting Mechanisms into MDI Drug Products.'' It is intended primarily for manufacturers of MDI drug products designed to deliver drugs to the lungs (e.g., an MDI for the treatment of asthma). Dose-counters are mechanisms designed to accurately track the number of actuations used by a patient over the life span of an individual MDI. The dose-counter would provide the patient with continuing, accurate data on the amount of medication left in the MDI. Currently, patients do not have an adequate way to track the number of metered-doses left in MDIs, and there is no way to detect when these devices have exceeded their dose limit. The incorporation of a reliable, accurate dose-counter into each MDI will enhance these drug products, which are relied on to deliver important and sometimes life-saving drugs to patients with asthma and other obstructive lung diseases.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the integration of dose-counting

mechanisms into MDI drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: December 3, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–30491 Filed 12–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1681]

Guidance on Use of Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies.'' This guidance updates a notice of availability entitled ''Potassium Iodide as a Thyroid-Blocking Agent in a Radiation Emergency: Final Recommendations on Use'' published in the **Federal Register** on June 29, 1982, concerning the prophylactic use of potassium iodide (KI) in the event of release of radioactive isotopes of iodine. In this guidance, FDA maintains its position that KI is a safe and effective means by which to prevent radioiodine uptake by the thyroid gland and, thus, reduce the risk of thyroid cancer in the event of a radiation emergency. The guidance recommends lower radioactive exposure thresholds for KI prophylaxis as well as lower doses of KI for neonates, infants, and children than previously recommended.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Rose Cunningham, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Emergency Management Agency (FEMA) has established roles and responsibilities for Federal agencies in assisting State and local governments in their radiological emergency planning and preparedness activities. The Federal agencies, including the Department of Health and Human Services (DHHS), are intended to accomplish these roles and responsibilities as part of the Federal Radiological Preparedness Coordinating Committee. Among other responsibilities, DHHS is to provide guidance on the use of radioprotective substances to reduce radiation doses to specific organs from the release into the environment of large quantities of radioactivity. FDA is specifically charged with providing guidance on the prophylactic use of KI in the event of release of radioactive isotopes of iodine.

As part of its responsibilities as established by FEMA, on June 29, 1982, FDA published in the **Federal Register** a notice entitled ''Potassium Iodide as a Thyroid-Blocking Agent in a Radiation Emergency: Final Recommendations on Use'' (47 FR 28158). In that notice, the agency made recommendations regarding the use of KI as a thyroid blocking agent. During 1999 to 2000, the agency reviewed additional data gathered primarily after the Chernobyl reactor accident. On January 4, 2001 (66 FR 801), the agency issued a draft guidance that revised some of the 1982 recommendations. The initial comment period on the draft guidance closed on February 5, 2001. On February 9, 2001 (66 FR 9711), the agency extended the comment period to April 30, 2001. After consideration of all comments, the agency is issuing this final version of the guidance. Other than clarifying edits, the agency has made no substantial changes to the recommendations incorporated in the draft guidance. In this guidance the agency maintains its position that KI is a safe and effective means by which to prevent radioiodine uptake by the thyroid gland and thus to reduce the risk of thyroid cancer in the event of a radiation emergency. FDA proposes lower radioactive exposure thresholds for KI prophylaxis as well as lower doses of KI for neonates, infants, and children than previously recommended. FDA's revised recommendations are in general accordance with those of the World Health Organization, as expressed in its ''Guidelines for Iodine Phrophylaxis Following Nuclear Accidents'' (1999), except for minor modifications.

The recommendations in the guidance were prepared by FDA scientists from the Center for Drug Evaluation and Research and from the Center for Devices and Radiological Health, in consultation with other governmental experts.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the use of potassium iodide as a thyroid blocking agent in radiation emergencies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number

found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: December 3, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–30492 Filed 12–10–01; 8:45 am]

BILLING CODE 4160–01–S

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.

Imaging of Extracellular Proteases in Cells Using Mutant Anthrax Toxin Protective Antigens

Bugge et al. (NIDCR)

DHHS Reference No. E–295–01/0 filed 05 Sep 2001

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov.*

The claimed invention provides highly specific and sensitive methods for in vivo, in vitro, or ex vivo imaging of specific extracellular protease activity using an anthrax binary toxin system. The system targets cells that express extracellular proteases of interest. Such a system would be highly useful since various studies have demonstrated a positive correlation between the activity of extracellular proteases and various diseases and undesirable physiological conditions. For example, breakdown of the extracellular matrix by extracellular proteases is a prerequisite for the invasive growth of malignant cells, metastatic spread of tumors, and other pathological remodeling of tissue. In this case, methods are provided for the imaging of a specific extracellular protease by contacting a cell with: (1) A mutant anthrax toxin protective antigen (mPrAg) that binds to a cell surface receptor of a cell expressing an extracellular protease and is cleaved by a specific extracellular protease expressed by the cell and (2) a ligand that specifically binds to the cleaved mPrAg and is linked to a moiety that is detected by an imaging procedure, thereby forming a ligand-mPrAg complex that is translocated into the cell. The detectable moiety linked to the ligand in the ligand-mPrAg complex can be imaged before, during, or after translocation. Specific disease examples might include, but are not necessarily limited to, cancer, inflammation, and tumor progression or regression.

Neural Crest-Melanocyte cDNA Based Microarray Analysis for Human Skin Pigmentation Research

William Pavan and Stacie K. Loftus (NHGRI)

DHHS Reference No. E–014–02/0

Licensing Contact: Pradeep Ghosh; 301/496–7736 ext. 211; e-mail: *ghoshp@od.nih.gov.*

Microarrays have wide applications in basic research and are used for the discovery of candidate genes as markers for disease and for therapeutic intervention. This invention pertains to the identification of a set of neural crest-melanocyte (NC–M) genes through microarray analysis and informatic analysis. Utilizing the extensive sequence information in the expressed sequence tag database (dbEST), the specific set of cDNA sequence was identified for microarray analysis of melanocyte function and diseases. This integrated technique of sequencing with bioinformatics led to the discovery of novel genes. The cDNA sequences selected in this invention are differently expressed in neural crest melanocyte derivates relative to non-neural derived samples. Given that many of the neural-crest melanocyte genes are expressed at embryonic stages of neural crest-melanocyte development, the gene set identified in this invention should provide a useful tool for the analysis of patterns of transcriptional regulation of NC–M development. Thus, this technology will be useful for the characterization of altered expression patterns in diseases such as melanoma. Further, this new microarray research tool has been developed using the set of genes that are likely to be involved in the control of human skin pigmentation. The microarray system utilizing these genes is of significant importance in identifying small molecules that may modulate their activity leading to alterations in human skin pigmentation. Therefore, this invention is significantly useful to the researchers to study alterations in human skin pigment amount and type.

Dated: November 29, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–30515 Filed 12–10–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 person privacy.

Name of Committee: National Cancer Institute Initial Review Group. Subcommittee A—Cancer Centers.

Date: December 7, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Palladin West, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, Ph.D., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive

Boulevard—Room 8117, Bethesda, MD 20892–7405, 301/496–2330.

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. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30520 Filed 12–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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 Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 11, 2001.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Katherine Woodbury, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 3, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30516 Filed 12–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

Date: March 13, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30517 Filed 12–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of General Medical Sciences; Notice of 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 a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Advisory General Medical Sciences Council.

Date: January 24–25, 2002.

Closed: January 24, 2002, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: January 24, 2002, 10:30 am to 5:00 pm.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of Council.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: January 25, 2002, 8:30 am to adjournment.

Agenda: To review and evaluate grant applications, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Norka Ruiz Bravo, Ph.D., Associate Director for Extramural Activities, Natcher Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 594–4499.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-

in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *pub.nigms.nih.gov/council/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; ;93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30518 Filed 12–10–01; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

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 in advance of the meeting.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: December 10, 2001.

Time: 3:30 pm to 5 pm.

Agenda: To present the Director's Report.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Conference Room 701, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Robert D. Hammond, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the recent attacks on America, portions of the Advisory Council meeting had to be rescheduled.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(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 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30521 Filed 12–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of 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 a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the pubic as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Advisory Child Health and Human Development Council.

Date; January 24–25, 2002.

Open: January 24, 2002, 8:3 am to 5 pm.

Agenda: The agenda includes: Report of the Director, NICHD; presentations by the National Center for Medical Rehabilitation Research and the Division of Intramural Research, NICHD, and other business of the council.

Place: Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Closed: January 25, 2002, 8:30 AM to adjournment.

Agenda: To review an evaluate grant applications.

Place: Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Contact Person: Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485,

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page:www.nichd.nih.gov/about/nachhd.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30522 Filed 12–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel Events Recordings of High Risk Infants on Apnea Monitors.

Date: December 12, 2001.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Norman Chang, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

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. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30523 Filed 12–10–01; 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 3, 2001.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheri Wiggs, Ph.D., 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 3, 2001.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Marcus, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245, *richard.marcus@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, 2001.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

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, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeanne N. Ketley, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 2001.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, Ph.D., 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, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30519 Filed 12–10–01; 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 4–5, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Four Points Sheraton, 8400 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, Scientific Review Administrator, Genome Study Section, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892 301/435–1045.

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 4, 2001.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Zakir Bengali, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health , 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1743.

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 4, 2001.

Time: 2 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Nancy Shinowara, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, *shinowan@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 4, 2001.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Nancy Shinowara, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, *shinowan@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.

(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, 93.893, 93.893, National Institutes of Health, HHS)

Dated: December 3, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30524 Filed 12–10–01; 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 10, 2001.
Time: 2 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Richard Marcus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@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 10, 2001.
Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Joy Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, 301–435–4522, gibsonj@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, 2001.
Time: 8 a.m. to 12 p.m.
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 7814, Bethesda, MD 20892, (301) 435–1787.
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: January 4, 2002.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Karen Sirocco, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*

(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: December 3, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–30525 Filed 12–10–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Action Under the NIH Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of final action under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: The NIH is amending Appendix B–I of the NIH Guidelines to establish criteria for designating strains of E. coli as risk group 1 agents.

DATES: This final action is effective December 11, 2001.

FOR FURTHER INFORMATION: Background documentation and additional information can be obtained from the Office of Biotechnology Activities (OBA), 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892–7985, Phone: 301–496–9838, Fax: 301–496–9839. The OBA web site is located at *http://www4.od.nih.gov/oba.*

SUPPLEMENTARY INFORMATION: This final action amends Appendix B–I of the NIH Guidelines. The proposed action was published for comment in the **Federal Register** on August 13, 2001 (66 FR 42555), and considered by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on September 6–7, 2001.

Background Information and Response to Comments

The background of the August 13, 2001, proposed action was set forth fully in the **Federal Register** notice announcing that action (66 FR 42555–56). During its September 6–7, 2001, meeting, the RAC discussed the proposed action and considered the one public comment that was received prior to the meeting. This commenter suggested that establishing risk criteria for a specific bacterial strain was inappropriate and that the proposed criteria were not general enough and too complex. The commenter felt that the current definition of a risk group 1 agent should be sufficient. This suggestion was discussed by the RAC. It was the RAC's consensus that establishing

criteria specific for E. coli provided useful guidance in response to the specific request from the University of Florida. The RAC recommended acceptance of the proposed criteria for designation of E. coli as a risk group 1 agent by a vote of 7 in favor, 0 opposed, and 1 abstention.

The NIH concurs with the RAC that risk assessment is enhanced by the establishment of these criteria for designating strains of E. coli as risk group 1 agents. As noted in the proposed action, these criteria are not intended to eliminate the need for case-by-case consideration of the potential effects of a biological agent on those who may be exposed to it (Section II–A–2 of the NIH Guidelines) and are subject to reevaluation and change if it is shown that a strain meeting the criteria is associated with disease in healthy human adults.

After the September RAC meeting, an additional comment on the proposed criteria was received. This comment, from the American Biological Safety Association (ABSA), suggested that the phrase ''rough colony morphology'' was not very informative; colony morphology is influenced by environmental factors and is not solely dependent upon genotype. We concur with that comment; thus, mention of ''rough'' colony morphology has been deleted from the criteria. ABSA also suggested that the second criterion should be expanded upon to state that the bacteria do not carry ''* * *any functional or complete genes encoding these factors'' as opposed to ''* * *any genes encoding these factors.'' We did not concur with this comment due to the fact that the strains of E. coli that have been studied demonstrate the presence or entire absence of factor-encoding genes. Strains carrying genes that have been rendered non-functional by laboratory manipulations (e.g., partial deletions or missense mutations) should not automatically be designated as risk group 1 agents.

Accordingly, the only change in this final action from the proposed action is deletion of the reference to ''rough colony morphology.''

Amendments to the NIH Guidelines

Appendix B–I. Risk Group (RG1) Agents of the NIH Guidelines is amended to read:

RG1 agents are not associated with disease in healthy adult humans. Examples of RG1 agents include asporogenic Bacillus subtilis or Bacillus licheniformis (see Appendix C–IV–A, Bacillus subtilis or Bacillus licheniformis Host-Vector Systems, Exceptions); adeno-associated virus (AAV) types 1 through 4; and recombinant AAV constructs, in which the transgene does not encode either a potentially tumorigenic gene product or a toxin molecule and are produced in the absence of a helper virus. A strain of Escherichia coli (see Appendix C–II–A, Escherichia coli K–12 Host Vector Systems, Exceptions) is an RG1 agent if it (1) does not possess a complete lipopolysaccharide (i.e., lacks the O antigen); and (2) does not carry any active virulence factor (e.g., toxins) or colonization factors and does not carry any genes encoding these factors.

Those agents not listed in Risk Groups (RGs) 2, 3 and 4 are not automatically or implicitly classified in RG1; a risk assessment must be conducted based on the known and potential properties of the agents and their relationship to agents that are listed.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which recombinant DNA techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: November 21, 2001.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 01–30513 Filed 12–10–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Proposed Actions Under the NIH Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of final action under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: The NIH is amending the provisions of the NIH Guidelines relating to the Recombinant DNA Advisory Committee (RAC) by authorizing a minimum of 15 voting members and establishing the charter of the committee as the controlling document for the membership and procedures of the RAC.

DATES: This Final Action is effective as of January 10, 2002.

FOR FURTHER INFORMATION: Documentation and additional information can be obtained from the Office of Biotechnology Activities, National Institutes of Health, MSC 7985, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, Phone 301–496–9838, FAX 301–496–9839. The NIH OBA Web site is located at *http://www4.od.nih.gov/oba/.*

SUPPLEMENTARY INFORMATION:

Background

The RAC serves a unique role in promoting awareness and understanding of the scientific, medical, safety, and ethical issues associated with human gene transfer research. This occurs through review and public discussion of protocols, as well as through specific recommendations for improving trials that are conveyed to investigators and their institutions. To fulfill these functions and address all dimensions of human gene transfer research as fully as possible, the RAC has historically been constituted in a manner that allows for diverse perspectives and necessary expertise in relevant disciplines.

Section IV–C–2 of the NIH Guidelines has provided that the RAC consist of 15 voting members including the Chair, appointed by the DHHS Secretary or designee, at least 8 of whom must be authorities knowledgeable in the fields of molecular genetics, molecular biology, recombinant DNA research, or other scientific fields. At least 4 members of RAC, according to this section, shall be persons knowledgeable

in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives from designated Federal agencies serve as non-voting members.

In recent years, not only has the number of gene transfer trials dramatically increased, but these trials now encompass a much more expansive array of clinical applications than was previously possible. Current trials address, for example, cancer, inborn errors of metabolism, cardiovascular diseases, autoimmune disorders, and neurologic diseases. In addition, trials employ a growing variety of viral vectors, including vaccinia, fowl pox, canary pox, herpes simplex virus, adeno-associated virus, adenovirus, and retroviruses. Thus, an increasingly broad range of expertise is needed on the RAC to adequately assess the issues raised by the progressively more diverse gene transfer trials being proposed and submitted to the NIH. Given the dynamism of the field, flexibility in how this expertise is achieved is key to the effective and efficient functioning of the RAC.

In recognition of the rapidly evolving field of human gene transfer, the NIH is now amending Section IV–C–2 of the NIH Guidelines to authorize a *minimum* of 15 voting members with no maximum number of voting members specified. The maximum number of voting members will be established through the charter for the RAC, which will now be the controlling document for the membership and procedures of the Committee in the event of any conflict with the NIH Guidelines. This will enable NIH to respond promptly to the need for additional expertise on the RAC through appropriate amendments to the charter. The present requirement that at least 8 of the voting members be knowledgeable in the fields of molecular genetics, molecular biology, recombinant DNA research or other scientific fields, is changed to ''at least a majority of the voting members,'' and clinical gene transfer research is added as an example of a relevant scientific field. Finally, the listing of specific types of knowledge for members other than those knowledgeable in relevant scientific fields is broadened by adding laboratory safety and protection of human subjects and by changing ''applicable law'' to ''law,'' and ''standards of professional conduct and practice'' to ''ethics.''

Public Comments

These changes were published as a proposal in the August 24, 2001, **Federal Register** (66 FR 44638) with a 30-day period for comment public. Two sets of comments were received in response, one from a biosafety officer at a large academic institution, the other from private company engaged in gene transfer research. Both commenters expressed the view that it was unnecessary to allow for more than 15 voting members, suggesting instead that additional expertise could be obtained through the use of ad hoc experts. Neither commenter addressed the proposal to make the RAC charter the controlling document for the membership and procedures of the RAC.

Response to Public Commentary

Ad hoc members are only intermittently involved in the RAC process, and while they do serve an important function, they do not benefit from the longitudinal perspective that officially appointed RAC members bring to the review and discussion of human gene transfer protocols by virtue of their ongoing participation. Furthermore, because ad hoc experts do not vote, the NIH believes that they do not have as direct a voice in the final recommendations concerning these protocols as do voting members. The ability to vote ensures that the perspectives of RAC members are fully reflected in the outcome of RAC discussions. For these reasons, the use of ad hoc members is not an optimal means of durably enhancing the range of expertise and intellectual continuity on the RAC.

Thus, no changes are being made in the proposed amendments in response to these two sets of comments. Two changes have been made in the proposed amendments in order to clarify their intent, however. The statement that the charter of the RAC would establish the expertise of voting members has been deleted. That statement implied incorrectly that the RAC charter would be more specific than the NIH Guidelines in specifying the expertise of RAC members. The charter will repeat the provisions of the NIH Guidelines on the expertise of RAC members. The reference to a ''majority of the voting members'' in the third sentence of the second paragraph of Section IV–C–2 has been changed to ''At least a majority of the voting members * * *'' Consistent with the current provision, this change clarifies that more than a majority may be knowledgeable in scientific fields, so long as at least four members are knowledgeable in the other fields listed. On November 1, the RAC met by teleconference and voted unanimously to recommend implementation of the proposal.

Amendments to the NIH Guidelines

Section IV–C–2 of the NIH Guidelines is amended to state:

Section IV–C–2. Recombinant DNA Advisory Committee (RAC)

The RAC is responsible for carrying out the functions specified in the NIH Guidelines, as well as others specified in its charter or assigned by the Secretary of Health and Human Services or the NIH Director. The RAC membership and procedures, in addition to those set forth in the NIH Guidelines, are specified in the charter for the RAC which is filed as provided in the General Services Administration Federal Advisory Committee Management regulations, 41 CFR part 101–6, and is available on the OBA web site, *http://www4.od.nih.gov/oba/rac/RACCharter.htm.* In the event of a conflict between the NIH Guidelines and the charter, the charter shall control.

The RAC will consist of not less than 15 voting members, including the Chair, appointed under the procedures of the NIH and the Department of Health and Human Services. The maximum number of voting members will be established in the charter of the RAC. At least a majority of the voting members must be knowledgeable in relevant scientific fields, e.g., molecular genetics, molecular biology, recombinant DNA research, including clinical gene transfer research. At least 4 members of the RAC must be knowledgeable in fields such as public health, laboratory safety, occupational health, protection of human subjects of research, the environment, ethics, law, public attitudes or related fields. Representatives of the Federal agencies listed in the charter shall serve as non-voting members. Nominations for RAC members may be submitted to the Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, MSC 7985, Bethesda, MD 20892–7985 (20817 for non-USPS mail), 301–496–9838, 301–496–9838 (fax).

All meetings of the RAC shall be announced in the **Federal Register**, including tentative agenda items, 15 days before the meeting. Final agendas, if modified, shall be available at least 72 hours before the meeting. No item defined as a Major Action under Section IV–C–1–b–(1) may be added to an agenda following **Federal Register** publication.

OMB's ''Mandatory Information Requirement for Federal Assistance

Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the proposed guidance in this notice covers virtually every NIH and Federal research program in which recombinant DNA techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: November 21, 2001.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 01–30514 Filed 12–10–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Bureau of Indian Affairs

Office of Special Trustee for American Indians

Office of Indian Trust Transition

Tribal Consultation on Indian Trust Asset Management

AGENCIES: Office of the Secretary, Bureau of Indian Affairs, Office of the Special Trustee for American Indians, Office of Indian Trust Transition, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: The Office of the Secretary, along with the Bureau of Indian Affairs, the Office of Special Trustee for American Indians, and Office of Indian Trust Transition, will conduct meetings on Indian trust asset management. The purpose of the meetings is to discuss a proposed reorganization of the Department's trust responsibility functions to improve the management of Indian trust assets. Any tribe, band, nation or individual is encouraged to attend the meetings and to submit written comments.

DATES: The dates and city locations of the consultation meetings are as follows:

- December 13, 2001—Albuquerque, New Mexico
- December 20, 2001—Minneapolis, Minnesota
- January 3, 2002—Oklahoma City, Oklahoma
- January 10, 2002—Rapid City, South Dakota
- January 17, 2002—San Diego, California
- January 23, 2002—Anchorage, Alaska
- February 1, 2002—Washington, DC (Arlington, Virginia)

ADDRESSES: The addresses for the consultation meetings, which will all begin promptly at 9:00 a.m., are as follows:

- Albuquerque, New Mexico—The Hyatt Regency, 330 Tijeras Street NW
- Minneapolis, Minnesota—The Double Tree Hotel, 7901 24th Ave. South
- Oklahoma City, Oklahoma—Westin Hotel, 1 North Broadway
- Rapid City, South Dakota—Holiday Inn Rushmore Plaza, 505 N. 5th Street
- San Diego, California—Hanalei Red Lion Hotel, 2270 Hotel Circle North
- Anchorage, Alaska—Hilton Anchorage, 500 West 3rd Street
- Washington, DC—Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia

FOR FURTHER INFORMATION CONTACT: Wayne R. Smith, Deputy Assistant Secretary—Indian Affairs, 1849 C Street NW., MS 4140 MIB, Washington, DC 20240 (202/208–7163).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to involve affected and interested parties in the process of organizing the Department's trust asset management responsibility functions. The Department has determined that there is a need for dramatic change in the management of Indian trust assets. This need has been made apparent in several ways. An independent consultant has analyzed important components of the Department's trust reform activities and made several recommendations, including the recommendation that the Department consolidate trust functions under a single entity. Concerns have also been raised in the *Cobell* v. *Norton* case, which is currently pending in the Federal District Court for the District of Columbia. Internal review has also supported reorganization. Additionally, a recent report commissioned by the Department of the Interior has supported reorganization. This report, developed by the EDS Corporation, is being made available online at *www.doi.gov* for public review. A new office in the Department, the Office of Indian Trust Transition, has been created to plan and support reorganization. While preliminary actions have been taken by the Department, the plan for reorganization is still in the early stages of development. Prior notice of the first two consultation meetings scheduled in Albuquerque, New Mexico and Minneapolis, Minnesota, were published in the **Federal Register** on December 5, 2001 (66 FR 63306).

Written comments may be submitted at any of the above listed meeting locations or may be mailed to the address indicated under the heading **FOR FURTHER INFORMATION CONTACT.** Interested persons may examine written comments during regular business hours (7:45 a.m. to 4:15 p.m. EST) in the Office of the Assistant Secretary—Indian Affairs, Washington, DC, Monday through Friday, except for Federal holidays. Commenters who wish to remain anonymous must clearly state this preference at the beginning of their written comments. The Department will honor requests for anonymity to the extent allowable by law.

These meetings support administrative policy on tribal consultation by encouraging maximum direct participation of representatives of tribal governments, tribal organizations and other interested persons in important Departmental processes.

Dated: December 7, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 01–30734 Filed 12–10–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–02–1320–EL, WYW146744]

North Jacobs Ranch Tract, Wyoming; Competitive Coal Lease Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the North Jacobs Ranch Tract described below in Campbell County, WY, will be offered for competitive lease by sealed bid in accordance with the provisions of the

Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 2 p.m., on Wednesday, January 16, 2002. Sealed bids must be submitted on or before 4 p.m., on Tuesday, January 15, 2002.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107) of the BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Melvin Schlagel, Coal Coordinator, at 307–775–6258 and 307–775–6257, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Jacobs Ranch Coal Company of Gillette, WY. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following-described lands located in southeastern Campbell County near Wright, WY, approximately 7 miles east of State Highway 59 and 2 miles north of State Highway 450:

T. 44 N., R. 70 W., 6th P.M.
Sec. 26: Lots 8 through 12;
Sec. 27: Lots 1 through 16;
Sec. 28: Lots 1 through 16;
Sec. 29: Lots 1 through 16;
Sec. 30: Lots 5 through 20;
Sec. 31: Lots 5 through 20;
Sec. 32: Lots 1 through 16;
Sec. 33: Lots 4, 5, 12, 13;
Sec. 35: Lot 1;
T. 44 N., R. 71 W., 6th P.M.
Sec. 25: Lots 1 through 16.
Containing 4,982.24 acres, more or less.

All of the acreage offered has been determined to be suitable for mining. The surface estate of the tract is controlled by the Jacobs Ranch Mine and the Black Thunder Mine. Also, approximately 200 acres of private coal is located adjacent to the tract at the eastern boundary and about 640 acres of State of Wyoming coal is located adjacent to the tract at the southwest boundary. These reserves might be recovered in conjunction with the LBA but are not included as part of this lease sale.

There are numerous oil and gas wells and coalbed methane wells on the tract. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of this future income stream will determine whether a well is bought out and plugged prior to mining or re-established after mining is completed. Other costs considered will include moving or removing roads, pipelines, and surface facilities.

The tract contains surface minable coal reserves in the Wyodak seam currently being recovered in the adjacent, existing mines. Recovery of the Wyodak seam can occur in three splits: the upper, middle, or lower depending on the specific geology encountered. On the LBA, there is generally only a single split with the upper Wyodak separated by a thin parting from the main seam. The two seams merge into a single seam in the western portion of the LBA as the parting pinches out. The upper seam averages 13 feet thick and the main seam averages 52 feet thick on the LBA. The lower Wyodak splits in the far eastern portion of the LBA requiring multiple seam recovery near the burnline along the eastern LBA boundary. An additional seam below the Wyodak occurs in the far western portion of the LBA but this thin seam is not considered to be minable due to the high incremental stripping ratio and relatively low quality. There are no coal outcrops on the tract. The overburden above the Wyodak seam ranges from about 70–300 feet thick on the LBA.

The tract contains an estimated 537,542,000 tons of minable coal. This estimate of minable reserves includes the Wyodak splits mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. The total minable stripping ratio (BCY/Ton) of the coal is about 3.5:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam and multiple seam mining.

The North Jacobs Ranch LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8792 BTU/lb, 27.40% moisture, 5.46% ash, 0.45% sulfur, and 1.29% sodium in the ash. These quality averages place the coal reserves near the high end of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, January 15, 2002, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW146744, are available for inspection at the BLM Wyoming State Office.

Dated: December 5, 2001.

Phillip C. Perlewitz,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. 01–30533 Filed 12–10–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–02–1120–PG–24–1A]

Call for Nomination on Utah Resource Advisory Council (RAC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nomination on the Utah Resource Advisory Council (RAC).

SUMMARY: The purpose of this notice is to solicit public nominations for a vacancy which occurred on the Utah Resource Advisory Council (RAC). Utah residents with an interest and background in commercial recreation or oil and gas development are being sought to fill this vacancy on the 15-person Council which has occurred due to the resignation of one of its members. The person selected will serve out the remaining balance of a 3-year term that will continue through September 2003.

Nominees will be evaluated based on their experience or knowledge of the geographic area; education, training and/experience; and, their experience in working with disparate groups to achieve collaborative solutions. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's

qualifications. The Bureau of Land Management, along with the Governor's Office, will forward the nominations to the Secretary of the Interior, who will make the appointment to the Council.

Resource Advisory Councils were established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the Bureau of Land Management on management of public lands.

FOR FURTHER INFORMATION: Anyone interested in requesting a nomination form should inquire at the Bureau of Land Management, Utah State Office, Attention: Sherry Foot, 324 South State Street, Salt Lake City, Utah 84111; telephone (801) 539–4195. All nominations must be received no later than close of business January 4, 2002.

Dated: November 16, 2001.

Robert Bennett,

Associate State Director.

[FR Doc. 01–30614 Filed 12–10–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–02–1310–EI]

Notice of Intent To Prepare Planning Analyses/Environmental Assessments

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to Prepare a Planning Analysis/Environmental Assessment.

SUMMARY: The Jackson Field Office, Eastern States will prepare a Planning Analysis/Environmental Assessment (PA/EA), in cooperation with the U.S. Army Corps of Engineers, to consider leasing Federal mineral estate for oil and gas exploration and development. The lands, managed by the U.S. Army Corps of Engineers, are located along the South Pass and Southwest Pass near the mouth of the Mississippi River in Plaquemines Parish. This notice is issued pursuant to Title 40 Code of Federal Regulations (CFR) 1501.7 and Title 43 CFR 1610.2(c). The planning effort will follow the procedures set forth in Title 43 CFR part 1600. The public is invited to participate in this planning process, beginning with the identification of planning issues and criteria.

DATES: Comments relating to the identification of planning issues and criteria will be accepted for thirty days from the date of this publication. Individual respondents may request confidentiality. If you wish to without your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

ADDRESSES: Send comments to: Bureau of Land Management, Jackson Field Offices; 411 Briarwood Drive, Suite 404; Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: Clay Moore, Lead for PA/EA, Jackson Field Office, (601–977–5400).

SUPPLEMENTARY INFORMATION: The BLM has responsibility to consider nominations to lease Federal mineral estate for oil and gas exploration and development. An interdisciplinary team will be used in the preparation of the PA/EA. Preliminary issues, subject to change as a result of public input, are (1) Potential impacts of oil and gas exploration and development on the surface resources and uses by the Corps of Engineers and (2) consideration of restrictions on lease rights to protect surface resources and uses by the Corps of Engineers. Tract locations, along with acreage, are listed below. Total acreage being addressed is 7,966.6 acres.

T22S, R31E, Louisiana Meridian

Lot 3; being all of Lots or Sections 16 and 35 (33.82 acres)

T22S, R32F, Louisiana Meridian

Lot 2; being all of Lot or Sec. 16 (26.7 acres)
Lot 4a; being all of Lots or Sections 25 through 44 (870.65 acres)
Lot 7; being all of Lot or Section 19 (90.95 acres)

T22S, R33E, Louisiana Meridian

Lot 4b; being all of Lots or Sections 1 through 7 and Lots or Sections 3 through 14 (979.22 acres)
Lot 5; being all of Lots or Sections 15 and 16 (20 acres)

T23S, R21E, Louisiana Meridian

Lot 6; being all of Lots 9, 10, 15 and 16 (273 acres)

T23S, R32E, Louisiana Meridian

Lot 8; being all of Lot or Section 91 (121.72 acres)
Lot 9; being all of Lot or Section 1 and Lot or Section 13 (also described as Lot 18 T22S, R32E; Lot or Sections 14 through 90, Lots or Sections 92 through 96) (1,849 acres)

T24S, R32E, Louisiana Meridian

Lot 10; being all of Lots or Sections 1 through 40 and a portion of Lot or Section 28 (1,908.42 acres)

T24S, R32E and 33E, Louisiana Meridian

Lot 11; being all of Lots or Sections 41 through 78 and Lots 1 through 10 (1,793.12 acres)

Due to the limited scope of this PA/EA process, public meetings are not scheduled.

Sid Vogelpohl,

Acting Field Manager, Jackson Field Office.

[FR Doc. 01–30497 Filed 12–10–01; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Alturas, California, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday and Friday, Jan. 10 and 11, 2002, at the Bureau of Land Management's Alturas Field Office, 708 West 12th St., Alturas, California.

SUPPLEMENTARY INFORMATION: The meeting begins at 1 p.m., Jan. 10, and adjourns at noon, Jan. 11, in the Conference Room of the Alturas Field Office. Public comments will be accepted Thursday, Jan. 10, at 4 p.m. Meeting agenda items include a juniper management status report, an overview report of the Modoc-Washoe Experimental Stewardship Program, a status report on wild horse and burro management, and an update on management planning for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area.

FOR FURTHER INFORMATION CONTACT: BLM Alturas Field Manager Tim Burke, (530) 233–4666; or Public Affairs Officer Joseph J. Fontana, (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 01–30615 Filed 12–10–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Redding, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Wednesday and Thursday, Jan. 30 and 31, 2002, in Redding, California, for a field tour and business meeting. The meeting and tour are open to the public, but anyone attending must provide their own transportation and lunch.

SUPPLEMENTARY INFORMATION: The meeting begins Wednesday, Jan. 30, at 10 a.m. at the BLM Redding Field Office, 355 Hemsted Dr., Redding. Members will convene, then depart for a field tour of public lands managed by the Redding Field Office. On Thursday, Jan. 31, the council will convene at 8 a.m. in the Conference Room of the BLM Redding Field Office. Items on the agenda include a presentation on proposed wilderness legislation, a report from the council's recreation user fee subcommittee, a report on the draft environmental impact statement for management of the Headwaters Forest Reserve, and a report on a BLM vegetative management environmental impact statement.

Public comments will be taken Thursday at 1 p.m. Depending on the number of persons wishing to speak, a time limit may be established.

FOR ADDITIONAL INFORMATION: Contact Lynda J. Roush, BLM Arcata Field Manager, at (707) 825–2300, or BLM Public Affairs Officer Joseph J. Fontana, (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 01–30616 Filed 12–10–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Dakotas Advisory Council Meeting

AGENCY: Bureau of Land Management, South Dakota Field Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas Resource Advisory Council will be held February 25 & 26, 2002, at the Holiday Inn, Spearfish, South Dakota. The session will convene at 8 a.m. on February 25th. Agenda items will include: updates on off highway vehicle EIS and the National Energy Policy, Dakota Cement, and Fire and Fuel Reductions.

The meeting is open to the public and a public comment period is set for 8 a.m. on February 26, 2002. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Patrick Gubbins, Field Office Manager, South Dakota Field Office, 310 Roundup Street, Belle Fourche, South Dakota. Telephone (605) 892–7000.

Dated: October 31, 2001.

Patrick Gubbins,

Field Office Manager.

[FR Doc. 01–30617 Filed 12–10–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–01–0777–30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: approval of minutes of the previous meetings, Shoshone-Eureka Resource Management Plan Fire Amendment, Off-Highway Vehicle Draft Guidelines, Vegetation Draft Guidelines, 3809 Regulations, and Wild Horses, Field Managers' and District Ranger's reports.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

DATES, TIMES, PLACE: The time and location of the meeting is as follows:

Northeastern Great Basin Resource Advisory Council, Elko BLM Field Office, 3900 E. Idaho Street, Elko, Nevada, 89801; January 24, 2002, beginning at 9 a.m. public comment period 1:30 p.m.; tentative adjournment at 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Specialist, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801, telephone (775) 753–0386.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Helen M. Hankins,

Field Office Manager, Elko Field Office.

[FR Doc. 01–30618 Filed 12–10–01; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–427 (Preliminary)]

Film and Television Productions From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase countervailing duty investigation No. 701–TA–427 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) to determine whether there is a reasonable indication that an industry

in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of film and television productions (motion-picture film is provided for in subheading 3706.10 of the Harmonized Tariff Schedule of the United States), that are alleged to be subsidized by the Government of Canada. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must reach a preliminary determination in countervailing duty investigations in 45 days, or in this case by January 18, 2002. The Commission's views are due at Commerce within five business days thereafter, or by January 28, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 4, 2001.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on December 4, 2001, by the Film and Television Action Committee, Studio City, CA; the Screen Actors Guild, Los Angeles, CA; Studio Utility Employees Local 724 of the Laborers International Union, Hollywood, CA; Local 355 of the International Brotherhood of Teamsters (Teamsters), Baltimore, MD; Teamsters Local 391, Greensboro, NC; Teamsters Local 399, North Hollywood, CA; Teamsters Local 509, Cayce SC; Teamsters Local 592, Richmond, VA; and the Maryland Production Alliance, Baltimore, MD.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on December 27, 2001, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202–205–3184) not later than December 21, 2001, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 2, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 5, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–30507 Filed 12–10–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–439]

In the Matter of Certain HSP Modems, Software and Hardware Components Thereof, and Products Containing Same; Notice of Commission Decision To Affirm ALJ Orders Nos. 75 and 76; To Review Portions of a Final Initial Determination; To Extend by 45 Days the Target Date for Completion of the Investigation; and To Schedule for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade

Commission has determined to affirm ALJ Orders Nos. 75 and 76 issued by the presiding administrative law judge (''ALJ'') on June 29, 2001, and July 5, 2001, respectively; to deny ESS's motion to strike PCTEL's October 23 letter; to deny PCTEL's motion to supplement the record and its motion for leave to reply to ESS's response; to extend the target date for completion of the investigation by 45 days to March 4, 2002; and to review portions of the final initial determination (''ID'') issued on October 18, 2001, by the presiding ALJ finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public versions of the subject orders and ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 11, 2000, based on a complaint filed by PCTEL, Inc. (''PCTEL'') of Milpitas, California. The complaint named Smart Link Ltd. of Netanya, Israel and Smart Link Technologies, Inc. of Watertown, Massachusetts (collectively ''Smart Link'') and ESS Technology, Inc. (''ESS'') of Fremont, California as respondents. The complaint alleged that Smart Link and ESS had violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain HSP modems, software and hardware components thereof, and products containing the same by reason of infringement of claims 1–2 of U.S. Letters Patent 5,787,305 (''the '305 patent''), claims 1–4, 7–8, and 11–15 of U.S. Letters Patent 5,931,950 (''the '950 patent''), claims 1, 2, 10, and 15–17 of U.S. Letters Patent 4,841,561 (''the '561 patent''), and claims 1, 6–7, 10–12, and 15–19 of U.S. Letters Patent 5,940,459 (''the '459 patent'').

On April 5, 2001, the Commission determined not to review an ID granting PCTEL's motion for summary determination of its satisfaction of the economic prong of the domestic industry requirement.

On June 28, 2001, the Commission determined not to review an ID terminating the investigation as to respondent Smart Link on the basis of a settlement agreement. The only patents asserted by PCTEL against remaining respondent ESS are the '305 and '950 patents. Thus, only the '305 and '950 patents remain at issue in the investigation.

The ALJ issued his final ID on October 18, 2001. He found that respondent ESS's HSP modem products do not infringe claims 1 or 2 of the '305 patent; that the '305 patent is enforceable and not invalid; and that the technical prong of the domestic industry requirement is not met as to the '305 patent (i.e., that PCTEL's products of do not practice any claim in issue of the '305 patent). The ALJ also found that respondent ESS's HSP modem products literally infringe, contributorily infringe, and induce infringement of claims 1–3, 7, 8, and 11–15 of the '950 patent. The ALJ further found that the '950 patent is enforceable, not invalid, and that a domestic industry relating to complainant PCTEL's HSP modem products exists with respect to the '950 patent. Based on his findings concerning the '950 patent, the ALJ found that there is a violation of section 337.

The ALJ also issued his recommended determination on remedy and bonding in the event that the Commission also finds a violation of section 337. He recommended issuance of a limited exclusion order covering the accused ESS modem semiconductors, software, and the downstream products of modem boards and motherboards, but not personal computers. He also recommended issuance of a cease and desist order, and a bond in the amount of 9 percent of the entered value of the accused HSP modem products during the Presidential review period.

On October 31, 2001, complainant PCTEL, respondent ESS, and the Commission investigative attorney (''IA'') filed petitions for review of the final ID. On November 7, 2001, the IA filed a response to ESS's petition, and ESS filed a response to PCTEL's and the IA's petitions. On November 8, 2001, PCTEL filed an unopposed motion requesting a one-day extension of time to file its response to ESS's petition for review, which motion was granted by the Chairman, along with its response to ESS's petition for review.

On October 23, 2001, PCTEL filed a letter with the ALJ requesting reconsideration and supplementation of the ID to affirmatively include within the listed accused infringing products of ESS certain chipsets that the ALJ had not included in his ID or RD. On October 24, 2001, ESS filed a motion with the Commission to strike PCTEL's October 23 letter. The Commission has determined to consider PCTEL's October 23 letter as part of its petition for review and therefore denies ESS's motion to strike the letter.

On November 2, 2001, PCTEL filed a motion with the Commission to supplement the record. On November 14, ESS filed an opposition to PCTEL's motion and the IA filed a response in support of the motion. On November 16, 2001, PCTEL filed a motion for leave to reply to ESS's response, and filed a reply. The Commission has determined to deny PCTEL's motion to supplement, and to deny PCTEL's motion to reply to ESS's response as moot.

On November 29, 2001, the IA filed a motion with the Commission for an extension of time to submit briefs if the Commission determines to review the ID, and an extension of the target date from January 18, 2002, to February 18, 2002.

Having examined the ALJ's final ID, the petitions for review and the responses thereto, and the record of the investigation, the Commission has determined to review the following issues: Which chipsets of ESS are accused of infringement; the ALJ's construction of ''the device occupies an I/O slot that corresponds to a first communications port'' and ''UART emulation'' claim limitations of claim 1 the '305 patent and the resulting infringement and domestic industry findings; and the ALJ's construction of the ''selection logic'' and ''interrupt'' limitations of the claims at issue of the '905 patent, and the resulting infringement and domestic industry findings. The Commission determined not to review the remainder of the final ID.

On review, the Commission requests briefing based on the evidentiary record on all issues under review and is particularly interested in answers to the following questions, with all answers cited to the evidentiary record:

1. As to the construction of ''the device occupies an I/O slot that corresponds to a first communications

port'' limitation of claim 1 the '305 patent:

In Windows 95 and other later generation operating systems (''the Windows 95 operating systems''), is a standard, UART-based device always assigned to COM 1 through COM 4, and is a non-standard, non-UART device always assigned to COM 5 through COM 128?

Describe in detail serial COM port usage and standard and non-standard base address assignments in both the Windows 3.1 and Windows 95 operating systems, and UART and non-UART COM port usage in the Windows 3.1 and Windows 95 operating systems.

RX–520C states that MS–DOS supports ''128 logical names for addressing serial ports.'' Does MS–DOS therefore support 128 COM ports? How does this statement from RX–520C relate to the statement in the '305 patent that ''WINDOWS and MS–DOS support four communication or COM ports''? The '305 patent, col. 1, ll. 46–48.

Under Federal Circuit case law, what is necessary to conclude that one of ordinary skill in the art would interpret the claim term ''communications port'' in the light of Windows 95? Is being ''aware of'' the soon-to-be-released Windows 95 operating system sufficient? Is having ''access'' to an early set of documentation on how to develop software for the soon-to-be-released Windows 95 operating system sufficient?

2. As to the construction of the ''UART emulation'' limitation of claim 1 of the '305 patent:

What is the difference in ''UART emulation'' in the Windows 3.1 operating systems vis-a-vis the Windows 95 operating systems?

In the Windows 95 operating systems, does VCOMM expect UART data from all serial devices? Are the device drivers of non-UART devices in the Windows 95 operating systems required to simulate or ''emulate'' a UART response to VCOMM's data requests ?

3. As to the construction of the ''interrupt'' limitation of the claims at issue of the '950 patent:

Describe in detail PC power management on the ISA data bus vis-a-vis the PCI data bus, and the operation of a PME signal on the PCI bus.

Would the ''interrupt'' limitation of the claims at issue of the '950 patent be interpreted by one of ordinary skill in the art as applying only to the ISA bus? Or, in June of 1997, when the application that matured into the '950 patent was filed, would one of ordinary skill in the art also interpret the ''interrupt'' signal of the '950 patent as a PME signal on the PCI bus?

4. As to the construction of the ''selection logic'' limitation of the claims at issue of the '950 patent:

Is the claimed interrupt-switching ''selection logic'' of the claims at issue of the '950 patent mutually exclusive between modes?

Under a proper construction of ''selection logic,'' does the ''selection logic'' select or switch between interrupt sources, and output that selection onto a single interrupt signal line?

5. As to the infringement of the '305 patent:

Provide a detailed description of how the accused ESS HSP modems operate in the Windows 95 operating systems. How do the accused ESS HSP modems use VCOMM and modem.sys? Do the Windows 95 operating systems expect UART data from the accused ESS HSP modems?

6. As to the infringement of the '950 patent:

Describe the wake and sleep cycles of an ESS modem and the attached PC system. How do the ESS HSP modems block interrupts from an inactive modem, and then select the ring signal as an interrupt? Does the interrupt switching mechanism of the ESS HSP modems select from different interrupt sources for output onto a single interrupt signal line?

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994)(Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the October 18, 2001, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Responses to the above questions, written submissions on remedy, the public interest, and bonding, and proposed remedial orders must be filed no later than close of business on January 10, 2002. Reply submissions must be filed no later than the close of business on January 17, 2002. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See § 201.6 of the Commission's rules of practice and procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.42, 210.43, 210.45, 210.46, and 210.50 of the Commission's rules of practice and procedure (19 CFR 210.42, 210.43, 210.45, 210.46, and 210.50).

Issued: December 5, 2001

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–30506 Filed 12–10–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–450]

In the Matter of: Certain Integrated Circuits, Processes for Making Same, and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting Complainants' Motion for Summary Determination on Importation

AGENCY: U.S. International Trade Commission.

ACTION: Corrected notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (ALJ) in the above-captioned investigation on November 2, 2001, granting a motion of complainants' United Microelectronics Corporation, UMC Group (USA), and United Foundry Service, Inc. for summary determination on importation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 6, 2001. The complainants are United Microelectronics Corporation of Hsinchu City, Taiwan; UMC Group (USA) of Sunnyvale, California; and United Foundry Service, Inc. of Hopewell Junction, New York. The respondents are Silicon Integrated Systems Corp. of Hsinchu City, Taiwan; and Silicon Integrated Systems Corporation of Sunnyvale, California. 66 FR 13567 (2001).

On September 13, 2001, complainants filed a motion for summary determination on respondents' first affirmative defense of lack of importation. On September 25, 2001, respondents filed a cross-motion for summary determination on lack of importation. On the same day, the Commission investigative attorney (''IA'') filed his response in support of complainants' motion.

On October 5, 2001, complainants filed a memorandum in opposition to respondents' cross-motion for summary determination on lack of importation and a reply memorandum in support of complainants' motion for summary determination. On the same day, the IA filed his response in opposition to respondents' cross-motion for summary determination.

On October 23, 2001, complainants filed a motion for leave to file a supplemental memorandum in support of their motion, which was granted. On October 25, 2001, respondents 2 filed a response to complainants' motion for supplemental memorandum.

On November 2, 2001, the ALJ granted complainants' motion for summary determination and denied respondents' motion for summary determination. On November 8, 2001, respondents filed petition for review of the ID. On November 16, 2001, complainants and the IA filed responses in opposition to respondents' petition.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Issued: December 5, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–30505 Filed 12–10–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and thirteen states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-state system to exchange such records.

Matters for discussion are expected to include: (1.) Record Screening Requirements, (2.) National Fingerprint File (NFF)/Qualifications and Audit Criteria, (3.) Proposed Progressive Steps for Sanctions, (4.) Improvements to the Criminal History Background Process, (5.) Proposal to Improve Service to the Noncriminal Justice Customers Seeking Interstate Identification Index Information, (6.) Jurisdiction of the Compact Council, (7.) Expansion of Time Frame and Users of the Emergency Child Placement Rule, (8.) NFF Implementation Plan for Non-NFF Compact States, and (9.) Source Documentation for Policy and Compact Council Rules.

The meeting will be open to the public on a first-come first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Ms. Cathy L. Morrison at (304)625–2736, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIME: The Compact Council will meet in open session from 9 a.m. until 5 p.m. on January 8–9, 2002.

ADDRESSES: The meeting will take place at the Sheraton Grand Hotel, 1230 J Street, Sacramento, California, telephone (916) 447–1700.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Cathy

L. Morrison, Interim Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147, telephone (304) 625–2736, facsimile (304) 625–5388.

Dated: December 4, 2001.

Thomas E. Bush, III,

Section Chief, Programs Development Section, Federal Bureau of Investigation.

[FR Doc. 01–30536 Filed 12–10–01; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0143(2002)]

Standard on Presence Sensing Device Initiation; Extension of the Office of Management and Budget's Approval of Information-Collection Requirements

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

ACTION: Request for comment.

SUMMARY: OSHA requests comment on its proposal to extend OMB approval of the information-collection requirements contained in its Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)). This standard regulates the use of presence-sensing devices (''PSDs'') in mechanical power-press safety systems; a PSD (e.g., a photoelectric field or curtain) automatically stops the stroke of a mechanical power press when the device detects an operator entering a danger zone near the press. Accordingly, the standard protects employees from serious crush injuries, amputations, and death.

DATES: Submit written comments on or before February 11, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0143(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)) is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222 or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contract OSHA on the Internet at *http://www.osha.gov*, and select ''*Information Collection Requests.*''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

A number of paragraphs in OSHA's Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)) (the ''Standard'') contain paperwork requirements. These requirements include: Certifying brake-monitor adjustments, alternatives to photoelectric PSDs, safety-system design and installation, and employee training; annual recertification of safety systems; establishing and maintaining the original certification and validation records, as well as the most recent recertification and revalidation records; affixing labels to test rods and to certified and recertified presses; and notifying an OSHA-recognized third-party validation organization when a safety system component fails, the employer modifies the safety system, or a point-of-operation injury occurs. In addition, Appendix A of § 1910.217 provides detailed information and procedures required to meet the certification/validation provisions, as well as the design requirements, contained in the Standard. Accordingly, Appendix A supplements and explains the certification/validation provisions of the PSDI Standard, and does not specify new or additional paperwork requirements for employers. Appendix C § 1910.217 describes the requirements and procedures for obtaining OSHA recognition as a third-party validation organization; therefore the paperwork requirements specified by this appendix do not impose burden hours or cost directly on employers who use PSDs.

By complying with these paperwork requirements, employers ensure that PSDI-equipped mechanical power presses are in safe working order, thereby preventing severe injury and death to press operators and other employees who work near this equipment. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the requirements and that the equipment is safe.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to extend OMB approval of the information-collection requirements specified by the Standard even though the Agency can attribute no burden hours and cost to these requirements. In previous ICRs, OSHA estimated that each year employers would convert 1,988 mechanical presses to PSDI operation, and that manufacturers would produce an additional 250 new presses using PSDI (for an annual total of 2,238 presses). However, to date, no such presses appear to be in use, either because employers selected other stroke-control devices for mechanical power presses, or because no third-party organization is available to validate employer and manufacturer certifications that their PSDI equipment and practices meet the requirements of the Standard. Therefore, the Standard does not currently affect any known employer; accordingly, the paperwork requirements currently result in no burden hours or cost to employers.

The Agency believes that efforts by the American National Standards Institute (ANSI) to develop a national consensus standard for PSDI may increase use of these devices in the near future. The metal-forming industry, which is working with ANSI on developing the national consensus standard, requested that Agency to retain the Standard. Therefore, OSHA is

proposing that OMB extend its approval of the information-collection requirements specified by the Standard so that the Agency can enforce these requirements if employers begin using PSDI. This notice provides an opportunity for the public to comment on this proposal. The Agency will include a summary of these comments as part of its request to OMB to approve these paperwork requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)).

OMB Number: 1218–0143.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 0.

Frequency of Recordkeeping: On occasion; annually; other (initially).

Average Time per Response: 0.

Estimated Total Burden Hours: 0.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on December 5, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–30577 Filed 12–10–01; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–156)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that The Texas A&M University System, having offices in College Station, Texas, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent No. 5,827,531, entitled ''Multi-Lamellar, Immiscible-Phase Microencapsulation of Drugs''; U.S. Patent No. 6,099,864, entitled ''INSITU Activation of Microcapsules''; U.S. Patent No. 6,214,300, entitled ''Microencapsulation and Electrostatic Processing Device (MEPS)''; U.S. Patent No. 6,103,271, entitled ''Microencapsulation & Electrostatic Coating Process''; pending U.S. Patent Application entitled ''Protein Crystal Encapsulation Process''; NASA Case No. MSC22936–1–SB; pending U.S. Patent Application entitled ''Externally Triggered Microcapsules''; NASA Case No. MSC 22939–1–SB and pending continuations, divisional applications, and foreign applications corresponding to the above-listed cases. Each of the above-listed patents and patent applications are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. With respect to U.S. Patent No. 5,827,531 only. NASA's property interests are presently limited by the terms of previously issued License No. DE–252. NASA is in the process of terminating the DE–252 License, pursuant to the terms of that license and applicable provisions of Title 37 of the Code of Federal Regulations, part 404. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by January 10, 2002.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: December 4, 2001.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 01–30490 Filed 12–10–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings; Sunshine Act

TIME AND DATE: 10:00 a.m., Thursday, December 13, 2001.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.

2. Community Development Revolving Loan Program for Credit Unions: Notice of Applications for Participation and Interest Rate for Loans.

3. Final Rule: Parts 700, 701, 712, 715, 723, 725, and 790, NCUA's Rules and Regulations, Definitions and Technical Amendments.

4. Proposed Rule: Section 710.19, NCUA's Rules and Regulations, Retirement Benefits for Employees of Federal Credit Unions.

5. Final Rule: Amendment to Section 701.33 NCUA's Rules and Regulations, Definition of Compensation.

6. Proposed Request for Comments on Risk Mitigation of Non-Maturity Shares.

7. National Credit Union Share Insurance Fund (NCUSIF) Operating Level for 2002.

8. NCUA's Annual Performance Plan for 2002.

9. Purchase of Video Conferencing System.

10. Replacement of NCUA's Telephone and Voice Mail System.

11. Amendment to Interpretive Ruling and Policy Statement (IRPS) 99–1.

Recess: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, December 13, 2001.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).

3. Two (2) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–30625 Filed 12–6–01; 4:17 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License Nos. DPR–53 and DPR–69, issued to Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPI, the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1

and 2, located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

The proposed action is a one-time exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix E, Items IV.F.2.b and c regarding conduct of a full-participation exercise of the onsite and offsite emergency plans every 2 years. Under the proposed exemption, the licensee would reschedule the exercise originally scheduled for September 25, 2001, and complete the exercise requirements by September 31, 2002.

The proposed action is in accordance with the licensee's application for an exemption dated September 28, 2001.

The Need for the Proposed Action

10 CFR part 50, Appendix E, Items IV.F.2.b and c requires each licensee at each site to conduct an exercise of its onsite and offsite emergency plan every 2 years. Federal agencies (the U.S. Nuclear Regulatory Commission (NRC) for the onsite exercise portion and the Federal Emergency Management Agency for the offsite exercise portion) observe these exercises and evaluate the performance of the licensee, State and local authorities having a role under the emergency plan.

The licensee had initially planned to conduct an exercise of its onsite and offsite emergency plan on September 25, 2001, within the required 2-year interval. However, because of consideration for increased security risk due to ingress and egress of personnel during the current period of heightened security, and consideration that activities associated with the exercise could create undue public alarm, the licensee has decided to postpone the exercise.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a schedular change in conducting an exercise) unrelated to plant operations.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

On October 9, 2001, the staff consulted with the Maryland State official, Mr. Richard McLean of the Maryland State Department of Natural Resources, 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 September 28, 2001, which is available for public inspection at the Commission'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 4th day of December 2001.

For the Nuclear Regulatory Commission.

Donna Skay,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–30609 Filed 12–10–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681]

International Uranium (USA) Corporation; Notice of Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to accept the license amendment for the NRC Materials License SUA–1358 to authorize the licensee, International Uranium (USA) Corporation (IUSA), to allow for the and reclamation of the White Mesa uranium mill, located near Blanding, Utah. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. William von Till, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8A33, Washington, DC 20555–0001. Telephone (301) 415–6251, e-mail *rwv@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Materials License SUA–1358 was originally issued by NRC on August 7, 1979, Pursuant to Title 10, Code of Federal Regulations (10 CFR), part 40, ''Domestic Licensing of Source Material.'' The IUC site is licensed by the U.S. Nuclear Regulatory Commission (NRC) under Materials License SUA–1358 to possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by the licensee's milling operations, as well as other source material from multiple locations. Some of these locations include material from Formerly Utilized Sites Remedial Action Program (FUSRAP) sites

managed by the U.S. Army Corps of Engineers (USACE). These materials have similar chemical, physical, and radiological composition to conventional mill tailings. The mill is currently operating.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the receipt and processing of materials from the Molycorp facility at the White Mesa mill, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedure for Environmental Protection. In conducting its appraisal, the NRC staff considered the following: (1) Information contained in the previous environmental evaluations of the White Mesa project; (2) information contained in the IUSA's amendment application dated December 19, 2000, and supplemented by letters dated January 29, February 2, March 20, August 15, October 17, and November 16, 2001; (3) information derived from NRC staff site visits and inspections of the White Mesa mill site, and (4) from comments and conversations from the State of Utah Department of Environmental Quality (DEQ), and the U.S. Environmental Protection Agency (EPA). The results of the staff's appraisal are documented in an Environmental Assessment.

Conclusions

The NRC staff has examined the actual and potential environmental impacts associated with the receipt and processing of the proposed Molycorp material, and has determined that the action is (1) consistent with requirements of 10 CFR Part 40, (2) will not be inimical to the public health and safety, and (3) will not have long-term detrimental impacts on the environment. The following statements support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect whether applicable regulatory limits are exceeded. Radiological effluents from site operations have been and are expected to continue to remain below the regulatory limits. A groundwater monitoring program is in place to detect potential seepage of contaminants from the tailings cells. The Entrada/Navajo Sandstone Aquifer is separated by low permeability formations from the tailings cells further decreasing a potential impact to groundwater resources. The Molycorp material will be placed on bermed concrete to reduce groundwater contamination while stored on the ore pad and an existing dust suppression program will be implemented at the Mill to reduce the potential for airborne contamination.

2. Present and potential environmental impacts from the receipt and processing of the Molycorp material were assessed. No increase in impacts has been identified as a result of this action, therefore, the staff has determined that the risk factors for health and environmental hazards are insignificant.

Alternatives to the Proposed Action

The action that the NRC is considering is approval of an amendment request to a source material license issued pursuant to 10 CFR part 40. The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or

2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

3. Deny the request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of IUSA's future operations or the denial of the license amendment. The NRC staff has concluded that there are no significant environmental impacts associated with the proposed action. Therefore, alternatives with equal or greater impacts need not be evaluated. Additionally, in the Technical Evaluation Report prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for reclamation, specified in 10 CFR 40, Appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed reclamation plan for NRC Source Material License SUA–1358. On the basis of this assessment, the NRC staff has concluded that the environmental impact that may result for the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action amendment application are available for public inspection and copying at the NRC Public Document Room, US Nuclear Regulatory Commission Headquarters, Room 0–1F21, 11555 Rockville Pike, Rockville, MD 20852.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, International Uranium (USA) Corporation, Independence Plaza, Suite 950, 1050 Seventeenth Street, Denver, Colorado 80265; Attention: Michelle Rehmann; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Michael Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 30th day of November 2001.

For the U.S. Nuclear Regulatory Commission.

Melvyn Leach,

Branch Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–30610 Filed 12–10–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 10, 17, 24, 31, 2001, January 7, 14, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 10, 2001

There are no meetings scheduled for the Week of December 10, 2001.

Week of December 17, 2001—Tentative

There are no meetings scheduled for the Week of December 17, 2001.

Week of December 24, 2001—Tentative

There are no meetings scheduled for the Week of December 24, 2001.

Week of December 31, 2001—Tentative

There are no meetings scheduled for the Week of December 31, 2001.

Week of January 7, 2002—Tentative

Wednesday, January 9, 2002

9:30 a.m.

Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larking, 301–415–7360)

Week of January 14, 2002—Tentative

There are no meetings scheduled for the Week of January 14, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

ADDITIONAL INFORMATION: By a vote of 5–0 on December 4 and 5, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3)'' be held of December 5, and no less than one week's notice to the public.

By a vote of 5–0 on December 5, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107 (a) of the Commission's rules that ''Affirmation of Connecticut Yankee Atomic Power Company (Haddam Neck Plant); Docket 50–213–OLA'' be held on December 5, and on less than one week's notice to the public.

By a vote of 5–0 on November 30 and December 3, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intragovernmental and Security Issues (Closed—Ex. 1 & 9)'' be held on December 5, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet System is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 6, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–30733 Filed 12–7–01; 12:45 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45122; File No. SR–CHX–99–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc., Relating to the Exchange's Limit Order Display Requirements

December 4, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. On November 20, 2001, the CHX amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its limit order display requirements under CHX Article XX, Rule 7 to conform to Rule 11Ac1–4 under the Act.[4] The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* October 15, 2001 letter from Daniel J. Liberti, Vice President and Chief Enforcement Counsel, CHX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission (''Amendment No. 1''). The CHX mailed Amendment No. 1 to the Commission on October 15, 2001, but the Commission never received the Amendment. The CHX provided the Commission with a telefaxed copy of the Amendment on November 20, 2001. The Commission agreed to accept the Amendment as of November 20, 2001, while awaiting delivery of the original, signed Amendment. In Amendment No. 1, the CHX (i) confirmed that the proposed change to exempt block-sized orders from the CHX's limit order display requirement will not apply when a customer has requested that the order be displayed; (ii) corrects a typographical error relating to CHX Article XX, Interpretation and Policy .01 relating the mark sense terminal; and (iii) adds new identifiers for subparagraphs (a) and (b) in CHX Article XX, Interpretation and Policy .05. The CHX made other minor, non-substantive changes to the proposal. *See* December 3, 2001 telephone conversation between Daniel J. Liberti, Vice President and Chief Enforcement Counsel, CHX, and Joseph Morra, Special Counsel, Division of Market Regulation, Commission.

[4] 17 CFR 240.11Ac1–4.

Chicago Stock Exchange Rules

Article XX, Rule 7. Recognized Quotations

Recognized quotations shall be public bids and offers in lots of one or more trading units or multiples thereof. Bids and offers in other market centers which may be displayed on the Floor for the purpose of ITS, or in accordance with Rule 39 or Rule 40 of this Article or other purposes shall have no standing in the trading crowds on the Floor. Bids or offers for less than one unit of trading shall specify the number of shares of stock or the principal amount of the bonds covered by the bid or offer. All bids made and all offers made shall be in accordance with the provisions of Rule 11Ac1–1 under the Securities Exchange Act of 1934, governing the dissemination of quotations for reported securities.

The following interpretations and policies pertain to all specialist system issues for which last sale information is reported pursuant to SEC Rule 11Aa3–1.

Interpretations and Policies:

.01 [Specialists shall input their current markets and sizes to the quotation system through the key terminal or the mark sense terminal at the post. These q]*Q*uotations shall be firm as to both price and size unless exempted under one of the conditions specified in paragraphs .06–.09 of this Rule.

.02 In respect to Dual Trading System issues specialists utilizing the Auto Quote mode are prohibited from disseminating a bid and/or offer more than ⅛ point away from the best ITS market.

.03 Market Makers, while at the post, shall input to the quotation system their bids and/or offers which better the current Exchange market. Such quotations shall remain in force until the market maker leaves the post. Market maker quotations and accompanying sizes shall be firm unless exempted under one of the conditions specified in paragraphs .06–.09 of this Rule.

.04 Floor Broker, while at the post, shall input to the quotation system those bids or offers which better the current Exchange market unless the bid or offer is cancelled or withdrawn if not executed immediately. If a floor broker transfers possession of an order to a specialist, the requirement for input to the quotation system becomes the obligation of the specialist. When a floor broker who retains possession of an order leaves the post he must withdraw his bid or offer from the quotation system. Quotations and accompanying sizes shall be firm until withdrawn unless exempted under one of the conditions specified in paragraphs .06–.09 of this Rule.

.05 (*a*) Quotation sizes, unless otherwise specified, shall be assumed to be for 100 shares. [Where bids or offers are made at the same price the aggregate quotation size of such equal bids or offers shall be inputted into the quotation system. Such aggregate sizes shall remain firm until withdrawn unless exempted under one of the conditions specified in paragraphs .06–.09 of this Rule.] With respect to *agency* limit orders received by specialists, each specialist shall publish immediately (i.e., as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt) a bid or offer that reflects:

(i) The price and full size of each *agency* limit order that is at a price that would improve the specialist's bid or offer in such security; and

(ii) The full size of each *agency* limit order that is priced equal to the specialist's bid or offer *and the national best bid or offer* for such security and represents more than a *de minimis* change in relation to the size associated with the specialist's bid or offer;

(*b*) The requirements with respect to specialists' display of limit orders shall not apply to any limit order that is:

(i) Executed upon receipt of the order;

(ii) Placed by a person or entity who expressly requests, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such person's orders, that the order not be displayed;

(iii) An odd-lot order;

(iv) Delivered immediately upon receipt to an exchange or association-sponsored system or an electronic communications network that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–1(c)(5) under the Securities Exchange Act with respect to that order;

(v) Delivered immediately upon receipt to another exchange member or over-the-counter market maker that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–4 under the Securities Exchange Act with respect to that order; [or]

(vi) An ''all or none'' order*; or*[.]

(vii) A block size order, unless the customer order is received with a request that the order be displayed.

.06–.09 (no change)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

On January 12, 1998, the Commission granted accelerated approval to a proposed rule change amending CHX Article XX, Rule 7[5] that expressly provided for the display of customer limit orders as contained in Rule 11Ac1–4 under the Act.[6] However, that change did not make CHX, Article XX, Rule 7 totally consistent with Rule 11Ac1–4 in that the Exchange did not adopt certain exceptions allowed under Rule 11Ac1–4, nor did the Exchange limit the application of CHX Article XX, Rule 7 solely to customer limit orders.

The Exchange now proposes to amend CHX Article XX, Rule 7 to be more consistent with Rule 11Ac1–4. More specifically, the proposed rule change would exempt block size limit orders,[7] orders that represent only a *de minimis* change in relation to the size associated with a specialist's quote, and orders for the account of a broker or dealer from the requirements of CHX Article XX, Rule 7, Interpretation and Policy .05. THe proposed rule change would also eliminate the Exchange requirement that a CHX specialist immediately publish the full size of a customer limit order that is at a price that would not improve the specialist's bid or offer when such specialist's bid or offer is not equal to the national best bid or offer.

Under Rule 11Ac1–4(c)(5),[8] a specialist is not required to display an order that is delivered immediately

[5] *See* Securities Exchange Act Release No. 39540 (January 12, 1998), 63 FR 2708 (January 16, 1998) (SR–CHX–97–26).

[6] 17 CFR 240.11Ac1–4.

[7] As defined in Rule 11Ac1–4, a block size order is an order of at least 10,000 shares or for a quantity of stock having a market value of at least $200,000.

[8] 17 CFR 240.11Ac1–4(c)(5).

upon receipt to an exchange or association-sponsored system that complies with the requirements of the rule with respect to that order. Because other market centers do not require the publication of certain orders that a CHX specialist must currently display under CHX Article XX, Rule 7 (*e.g.* block size orders), a CHX specialist may not deliver such orders to those other market centers for automatic relief from the requirements of CHX Article XX, Rule 7, despite the fact that such practice is permissible under Rule 11Ac1–4. The proposed modifications would, among other things, allow a CHX specialist to safely transfer such orders to other market centers that are subject to the requirements of Rule 11Ac1–4. As such, the proposed rule change would make CHX Article XX, Rule 7 more consistent with the requirements of Rule 11Ac1–4.

The proposal would also eliminate in CHX Article XX, Rule 7, Interpretation and Policy .01, a reference to the mark sense terminal, an Exchange facility that is no longer operational.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 CHX 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 the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–18 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–30503 Filed 12–10–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45121; File No. SR–NYSE–2001–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Exchange Fees

December 3, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2001,[3] the New York Stock Exchange, Inc. (''NYSE'' 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 NYSE. 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 NYSE proposes to amend Section 902.02 of the Listed Company Manual (''Manual'') to provide that the one-time fee and the minimum fee shall not apply to original listings of closed-end funds, and to implement a $1 million cap on the continuing annual fees payable by any one family of closed-end funds.

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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections, A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, there are over 380 closed-end funds listed on the Exchange. Many of these funds represent multiple listings from a family of funds such as Nuveen, Morgan Stanley Van Kampen or Merrill Lynch. This year the Exchange has carefully reviewed the original and continuing annual listing fees charged to closed-end funds listed on the Exchange, particularly focusing on how those fees affect the fund families that comprise such a larger part of the closed-end fund listings.

Currently, closed-end funds pay original listing fees based on the same schedule applicable to regular listed companies, with some modest relief in terms of the minimum original fee.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 3, 2001, the Commission received a letter from the NYSE explaining its rationale for the proposed rule filing. The proposed rule change is treated as filed on the date that the letter was received. *See* letter from James Duffy, Senior Vice President & Associate General Counsel, Office of the General Counsel, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2001.

[4] In addition, on July 23rd of this year the Exchange implemented a temporary cap of $1.25 million on the aggregate listing fees payable by any one fund family during 2001, although without refund for any family that had exceeded that level prior to the implementation of the cap. *See* Exchange Act Release No. 44554, July 13, 2001, 66

Exchange now proposes to eliminate the minimum original listing fee for closed-end funds, and to also eliminate the one time charge of $36,800 for such funds. Closed-end funds will pay original listing fees based on the number of shares issued according to the per share schedule applicable to listed companies generally as set forth in Section 902.02 of the Manual. Any fund which listed during the 2001 calendar year will receive a credit against its continuing annual fee for the 2002 calendar year representing the difference between the amount paid according to the current original listing fee schedule and the proposed schedule. In addition, the Exchange proposes to implement a $1 million annual cap on the amount of continuing annual listing fees payable by any one family of closed-end funds. The Exchange has traditionally differentiated with respect to fees among classes of issuers—such as closed end funds and structured (derivative) products. More specifically, this fee modification was influenced by the concern that funds, because they tend to be clustered in a limited number of ''families,'' could have been viewed from a certain perspective as bearing fees that were potentially somewhat high when compared to the fees paid by traditional business corporations.[5]

All the fee changes proposed above will become effective at the beginning of the 2002 calendar year.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[6] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change of 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. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to SR–NYSE–2001–48 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–30504 Filed 12–10–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45125; File No. SR–Phlx–2001–95]

Self-Regulatory Organizations; Notice of Filing for Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange. Inc. To Extend a Pilot Program for the Volume Weighted Average Price Trading (VWAP) System

December 4, 2001.

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 6, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 15, 2001, the Exchange amended the proposal.[3] The Exchange filed this proposal under Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through November 30, 2002 its pilot program for the Volume Weighted Average Price Trading (VWAP) System (''vwap'' system or ''System'') (''Pilot'').

FR 37715, July 19, 2001. This was done while the Exchange considered further what changes were appropriate in its closed-end fund fee schedule. This $1.25 million cap will expire by its own terms at the end of 2001.

[5] *See* note 3, *supra.*

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 14, 2001 letter from Murray L. Ross, Vice President and Secretary, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). In Amendment No. 1, the Phlx converted the proposed rule change to a non-controversial filing. *See* Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay. *See* Amendment No. 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

The Exchange proposes to extend the Pilot through November 30, 2002. The Pilot was established in SR–Phlx–96–14.[6] The only substantive change the Phlx proposes at this time is to extend the pilot program through November 30, 2002.[7] The text of the proposed rule change is available at the Phlx and at the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[8] in general, and in particular, with Section 6(b)(5),[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the Pilot to continue uninterrupted through November 30, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2001–95, and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–30502 Filed 12–10–01; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999). *See also* Securities Exchange Act Release Nos. 42701 (April 19, 2000), 65 FR 24529 (April 26, 2000) (SR–Phlx–00–26) and 43477 (October 23, 2000), 65 FR 64734 (October 30, 2000) (SR–Phlx–00–84) (extending pilot through November 1, 2000 and November 30, 2001, respectively).

[7] *See* December 3, 2001 telephone conversation between Murray L. Ross, Vice President and Secretary, Phlx, and Joseph Morra, Special Counsel, Division, Commission.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 230X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Raleigh County, WV

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.5-mile line of railroad between milepost AM–0.0 at Amigo and milepost AM–1.5 at Devils Fork, in Raleigh County, WV.[1] The line traverses United States Postal Service Zip Code 25911.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic, if there is any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with

[1] NSR notes that authority to discontinue operations on the line was granted by the former Interstate Commerce Commission. *See Norfolk and Western Railway Company—Discontinuance Exemption—in Wyoming County, WV,* Docket No. AB–290 (Sub-No. 88X) (ICC served June 18, 1990). The June 18, 1990 notice described the 1.5-mile discontinuance of the line as being located in Wyoming County, WV. By facsimile filed on December 4, 2001, NSR advised the Board that the line is located in Raleigh County, WV, as correctly identified in the present notice, and not Wyoming County, WV, as previously indicated in the notice of June 18, 1990.

any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 10, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 21, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 31, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 14, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 11, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our web site at ''*WWW.STB.DOT.GOV.*''

Decided: December 4, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–30608 Filed 12–10–01; 8:45 am]

BILLING CODE 4915–00–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–7.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–7, Application for IRS Individual Taxpayer Identification Number.

DATES: Written comments should be received on or before February 11, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for IRS Individual Taxpayer Identification Number.

OMB Number: 1545–1483.

Form Number: Form W–7.

Abstract: Form W–7 is used to apply for an IRS individual taxpayer identification number (ITIN). An ITIN is a nine-digit number issued by the IRS to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number. ITINs are intended for tax use only.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 1 Hour, 3 minutes.

Estimated Total Annual Burden Hours: 525,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: November 28, 2001.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 01–30622 Filed 12–10–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of establishment of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''Gulf War Registry—VA'' (93VA131).

DATES: Comments on the establishment of this system of records must be received no later than January 10, 2002. If no public comment is received, the new system will become effective January 10, 2002.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer (193B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 320–1839.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed Systems of Records

The Gulf War Registry (GWR), located at the Austin Automation Center (AAC), Austin, Texas, is an automated integrated system. The registry contains demographic and medical data of registry examinations from August 2, 1990, until such time as Congress by law ends the Gulf War, for veterans serving in the Southwest Asia theatre of operations during the Gulf War who may have been exposed to a toxic substance or environmental hazard. There is also registry data on veteran's spouse or children suffering from an illness or disorder (including birth defects, miscarriages, or stillbirth) which cannot be disassociated from the veteran's service in the Southwest Asia theatre of operations.

These data are entered manually on code sheets by VA facility staff or, in the case of veterans' spouses and children, by non-VA physicians. Hard copies of these code sheets then are sent to the AAC for entry into the GWR data set. The principal identifiers in these GWR records are the Social Security Number and veteran's name. The GWR system of records located at VA Central Office, Washington, DC, is an optical disk system containing images of paper records, i.e., GW code sheets. Once these paper records are scanned on optical disks, they are disposed of in accordance with RCS 10–1.

The purpose of this GWR system of records is to provide information about veterans who have had a GWR examination at a VA facility, and their spouses and/or children who have had examinations by non-VA physicians. The records are used to assist in generating hypotheses for research studies; to enable management to track patient demographics; to report birth defects among veterans' children; to assist in planning the delivery of health care services, including the associated costs; and, to possibly be used in the adjudication of claims perhaps related to exposure to a toxic substance or environmental hazard.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information to be maintained in the system:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual.

Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

2. The disclosure of records covered by this system, as deemed necessary and proper, may be made to named individuals serving as accredited service organization representatives, and other individuals named, as approved agents or attorneys, for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases, during verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

a. To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

b. To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 3301(f).

VA must be able to comply with the requirements of agencies charged with enforcing the law who are conducting investigations. VA must also be able to provide information to State or local agencies charged with protecting the public health as set forth in State law.

4. Disclosure may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of Title 44 United States Code.

NARA is responsible for archiving old records no longer actively used, but which may be appropriate for preservation; they are responsible, in general, for the physical maintenance of the Federal government's records. VA must be able to turn records over to these agencies in order to determine the proper disposition of such records.

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requestor), may be made for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

VA participates in various research programs and activities. VA must be able to disclose information for research purposes approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a

statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the Armed Services and/or their dependents may be disclosed

a. To a Federal department or agency or

b. Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to ensure the appropriateness of the disclosure to the contractor.

VA must be able to disclose information for research purposes needed to accomplish a statutory purpose of a Federal agency. VA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

7. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, information may be disclosed at VA's own initiative to the appropriate agency whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto. However, names and addresses of veterans and their dependents will be released only to Federal entities.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

VA health care facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices. VA must be able to disclose information for program review purposes and the seeking of accreditation and/or certification of health care facilities and programs.

9. Records from this system of records may be disclosed to the Department of Justice (DOJ), or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when: the agency, or any component thereof or any employee of the agency in his or her official capacity where the DOJ or the agency has agreed to represent the employee; or the U.S., when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation and has an interest in such litigation, and the use of such records by the DOJ or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which the records were collected.

Whenever VA is involved in litigation, or occasionally when another party is involved in litigation and VA policies or operations could be affected by the outcome of the litigation, VA would be able to disclose information to the court or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by the use of the information in the particular litigation is compatible with a purpose for which VA collects the information.

10. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement.

VA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: December 4, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

93VA131

SYSTEM NAME:

Gulf War Registry-VA.

SYSTEM LOCATION:

Character-based data from Gulf War Registry Code Sheets are maintained in a registry dataset at the Austin Automation Center (AAC), 1615 Woodward Street, Austin, Texas 78772. Since the dataset at the ACC is not all-inclusive, i.e., narratives, signatures, noted on the code sheets are not entered into this system, images of the code sheets are maintained at the Department of Veterans Affairs (VA), Environmental Agents Service (131), 810 Vermont Avenue, NW., Washington, DC 20420. These are electronic images of paper records, i.e., code sheets and questionnaires that are stored on optical disks.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Veterans who may have been exposed to toxic substances or environmental hazard while serving in the Southwest theatre of operations during the Gulf War from August 2, 1990, until such time as Congress by law ends the Gulf War, and have had a Gulf War Registry examination at a VA medical facility. Also, a spouse or child suffering from an illness or disorder (including birth defects, miscarriages, or stillbirth), which cannot be disassociated from the veteran's service in the Southwest Asia theatre of operations and who has had a Gulf War Registry examination performed by a non-VA physician.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of: Code sheet records recording VA facility code identifier where veteran was examined or treated; veteran's name; address, social security number' date of birth; race/ethnicity; marital status; sex;

branch of service; periods of service; hospital status, ie., impatient, outpatient; areas of service in the Gulf War theatre of operations; list of military units where veteran served; military occupation specialty; names of units in which veteran served; veteran's reported exposure to environmental factors; any traumatic experiences while in the Persian Gulf; veteran's self-assessment of health; veteran's functional impairment; report of birth defects and infant death(s) among veteran's children and/or problems with pregnancy and infertility; date of registry examination; veteran's complaints/symptoms; consultations; diagnoses; disposition (hospitalized, referred for outpatient treatment, etc.); whether veteran had an unexplained illness and had further tests and consultations and diagnoses as part of Phase II, Uniform Case Assessment Examination; and name and signature of examiner/physician coordinator, when provided. Similar responses for spouse and children of Gulf War veterans examined by non-VA physicians are contained in the records. Another category of data entries is obtained from depleted uranium (DU) questionnaires, a supplement to the Gulf War code sheet. The data entries may contain the facility identifier where the information was completed; demographic information (name and social security number); daytime and evening phone numbers; date of questionnaire completion; date of arrival in and departure from the Persian Gulf theatre of operations; source of referral to VA medical center for evaluation; where veteran served i.e. Iraq, Kuwait, Saudi Arabia, the neutral zone (between Iraq and Saudi Arabia), Bahrain, Qatar, The United Arab Emirates, Oman, Gulf of Aden, Gulf of Oman and the Waters of the Persian Gulf, Arabian Sea and Red Sea; capacity in which veteran served; questions relating to potential inhalation exposures to DU including those on, in, or near vehicles hit with friendly fire or enemy fire, entering burning vehicles, individuals near fires involving DU munitions, individuals salvaging damaged vehicles, and those near burning vehicles; whether veteran was wounded, retained DU fragments in veteran's body, handled DU penetrator rounds or any other exposures to DU; whether a 24-hour urine collection for uranium was performed; whether veteran consented to having the DU questionnaire data shared with the Department of Defense; name, title and signature of examiner/registry physician, when provided, and results of urine uranium tests, expressed per mcg per g creatinine.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.) sec. 1710(e)(1)(B) and sec. 1710(e)(1)(B) and sec. 1720E.

PURPOSE(S):

The records will be used for the purpose of providing information about: Veterans who have had a GWR examination at a VA facility and their spouses and/or children who have had examinations by non-VA physicians to assist in generating hypotheses for research studies; providing management with the capability to track patient demographics; reporting birth defects among veteran's children; planning the delivery of health care services and associated cost; and assisting in the adjudication of claims possibly related to exposure to a toxic substance or environmental hazard.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures, and in the presentation and prosecution of claims under laws administered by the VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

a. To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

b. To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 3301(f).

4. Disclosure may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of Title 44 United States Code.

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requestor) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(s) of present or former personnel or the Armed Services and/or their dependents may be disclosed

a. To a Federal department or agency or

b. Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, the VA may impose applicable conditions on the department, agency, and/or contractor to ensure the appropriateness of the disclosure to the contractor.

7. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, information may be disclosed at VA's own initiative to the appropriate agency whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto. However, names and addresses of veterans and their dependents will be released only to Federal entities.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews but

only to the extent that the information is necessary and relevant to the review.

9. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: the agency, or any component thereof; or any employee of the agency in his or her official capacity; where the DOJ or the agency has agreed to represent the employee; or the U.S. when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation, and has an interest in such litigation, and the use of such records by the DOJ or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which the records were collected.

10. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic data are maintained on Direct Access Storage Devices at the AAC, Austin, Texas, and on optical disks at VA Central Office, Washington, DC. AAC stores registry tapes for disaster back up at an off-site location. VA Central Office also has back-up optical disks stored off-site. In addition to electronic data, registry reports are maintained on paper documents and microfiche.

RETRIEVABILITY:

Records are indexed by name of veteran and social security number.

SAFEGUARDS:

Access to records to VA Central Office is only authorized to VA personnel on a ''need to know'' basis. Records are maintained in manned rooms during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel. Registry data maintained at the AAC can only be updated by authorized AAC personnel. Read access to the data is granted through a telecommunications network to authorized VA Central Office personnel. AAC reports are also accessible through a telecommunications network on a ready-only basis to the owner (VA facility) of the data. Access is limited to authorized employees by individually unique access codes which are changed periodically. Physical access to the AAC is generally restricted to AAC staff, VA Central Office employees, custodial personnel, Federal Protective Service, and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted. Backup records stored off-site for both the AAC and VA Central Office are safeguarded in secured storage areas.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Environmental Agents Service (131), Office of Public Health and Environmental Hazards (clinical issues) and Management/Program Analyst, Environmental Agents Service (131) (administrative issues) VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personnel identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where medical care was provided or submit a written request to the Director, Environmental Agents Service (131), Office of Public Health and Environmental Hazards or the Management/Program Analyst, Environmental Agents Service (131), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Inquiries should include the veteran's name, social security number and return address.

RECORD ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name may write or visit the nearest VA facility or write to the Director, Environmental Agents Service (131), or the Management/Program Analyst, Environmental Agents Service (131), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORDS PROCEDURES:

(See ''Record Access Procedures.'')

RECORDS SOURCE CATEGORIES:

VA patient medical records, various automated record systems providing clinical and managerial support to VA health care facilities, the veteran, family members, and records from Veterans Benefits Administration, Department of Defense, Department of the Army, Department of the Air Force, Department of the Navy and other Federal agencies.

[FR Doc. 01–30613 Filed 12–10–01; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 66, No. 238

Tuesday, December 11, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[TD 8965]

Unified Partnership Audit Procedures

Correction

In rule document 01–24517 beginning on page 50541 in the issue of Thursday, October 4, 2001, make the following correction:

§602.101 [Corrected]

On page 50564, in the first column, in the table in paragraph (b), the stars between the entries ''301.6231(c)–1'' and ''301.6231(c)–2'' are removed.

[FR Doc. C1–24517 Filed 12–10–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,

December 11, 2001

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

Motor Vehicle Safety; Proposed Rules

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–2001–11107]

RIN 2127–AI28

Motor Vehicle Safety; Reimbursement Prior To Recall

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to implement Section 6(b) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 6(b) provides that a manufacturer's program to remedy a safety-related defect or a noncompliance with a Federal motor vehicle safety standard shall include a plan for reimbursing an owner for the cost of a remedy incurred within a reasonable time before the manufacturer's notification of the defect or noncompliance and authorizes the agency to establish what constitutes a reasonable time and other conditions for the reimbursement plan.

DATES: *Comments:* You should submit your comments early enough to ensure that Docket Management receives them not later than February 11, 2002.

ADDRESSES: You should mention the docket number of this document in your comments, and submit your comments in writing to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/info'' to obtain instructions for filing the document electronically.

Regardless of how you submit your comments, you should mention the docket number of this document in your comments.

You may call Docket Management at 202–366–9324. You may visit Docket Management from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA, (202) 366–5226. For legal issues, contact Andrew J. DiMarsico, Office of Chief Counsel, NHTSA, (202) 366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2000, the TREAD Act, Pub. L. 106–414, was enacted. The statute was, in part, a response to congressional concerns related to manufacturers' inadequate responses to defects and noncompliances in motor vehicles and motor vehicle equipment. The TREAD Act authorizes the Secretary of Transportation (''the Secretary'') to issue various rules relating to a manufacturer's notification and remedy program. The authority to carry out Chapter 301 of Title 49 of the United States Code (''Safety Act''), under which rules directed by the TREAD Act are to be issued, has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

Under 49 U.S.C. 30118(b), the agency may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable Federal motor vehicle safety standard. In addition, under 49 U.S.C. 30118(c), a manufacturer of a motor vehicle or replacement equipment is required to notify the agency if it determines, or in good faith should determine, that its vehicles or equipment contain a defect that is related to motor vehicle safety or do not comply with an applicable Federal motor vehicle safety standard.

49 U.S.C. 30120(a) provides that when notification of a defect or noncompliance is required under section 30118 (b) or (c), the manufacturer is required to remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. That section further specifies that the remedy, at the option of the manufacturer, can be either to repair the vehicle or equipment or replace it with an identical or reasonably equivalent item or, in the case of a vehicle, refund the purchase price less depreciation. The Safety Act contains separate remedy provisions applicable to tires. 49 U.S.C. 30120(b).

49 U.S.C. 30120(d) requires a manufacturer to file with the Secretary a copy of the manufacturer's program for remedying a defect or noncompliance. Pursuant to 49 CFR part 577, manufacturers are required to notify owners of the remedy program. In order to obtain the manufacturer's remedy at no cost, an owner has to act in accordance with the provisions in the notice from the manufacturer. Any other way of remedying the defect or noncompliance would not be free of charge.

Before the TREAD Act, section 30120(d) did not require the manufacturer to reimburse owners for any costs incurred in remedying the defect or noncompliance prior to the notification required under sections 30118 and 30119. Manufacturers often reimbursed owners for these costs, but not in a uniform way. To the extent that the costs were not covered under a warranty program, manufacturers addressed these matters under extended warranty programs, ''good will'' programs, or in resolution of claims, including lawsuits.

Section 6(b) of the TREAD Act amends 49 U.S.C. 30120(d) to require a manufacturer's remedy program to include a plan for reimbursing an owner who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. Section 6(b) further authorizes the Secretary to prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan.

Below is a summary and explanation of the provisions of today's proposed rule implementing section 6(b).

II. Discussion

A. Introduction

Today's proposed rule would require manufacturers to submit reimbursement plans to the agency that satisfy specific requirements and to comply with the terms of those plans. The proposed rule would specify a minimum time period for which a manufacturer must provide reimbursement to an owner who incurred costs to obtain a remedy before the manufacturer provided notification to NHTSA of a noncompliance with a Federal motor vehicle safety standard or of a safety-related defect. In addition, this proposed rule would specify other requirements of the reimbursement plan and identify permissible conditions and limitations.

B. Who Will Be Required to Comply With the Provisions for a Reimbursement Plan?

The TREAD Act amendments to subsection 30120(d) provide that ''A *manufacturer's* remedy program shall include a plan for reimbursing an owner * * * (emphasis added).'' In these amendments, Congress added requirements to the pre-existing 30120(d) requirement that a manufacturer file with the Secretary a copy of the manufacturer's program for remedying a defect or noncompliance. In this context, the use of the term

manufacturer in the amendments indicates that they apply to the same manufacturers already regulated by section 30120(d). These manufacturers are identified by regulation in the applicability sections of 49 CFR parts 573 and 577, 49 CFR 573.3 and 577.3. Thus, we are proposing that the rule's requirements apply to manufacturers as delineated in sections 573.3 and 577.3.

C. What Constitutes a ''Reasonable Time'' in Advance of the Manufacturer's Notice of Noncompliance or of a Safety-Related Defect?

Under section 6(b) of the TREAD Act, manufacturers need only provide reimbursement for costs incurred within a ''reasonable time'' in advance of notification. Thus, not all pre-notification remedies are covered under this provision. The legislative history does not provide further direction. An earlier version of this provision would have required reimbursement for ''parts replaced immediately prior to recall.'' See H.R. Rep. No. 106–954 at 6 (2000). However, this language was not adopted. Instead, Congress used the term ''reasonable time,'' which is more extensive than ''immediately prior to recall,'' and authorized the agency to delineate what constitutes a reasonable time.

The agency believes that there should be objective, bright-line rules for determining reasonable times that apply across the board, as opposed to provisions that would require case-by-case factual determinations. Bright-line rules can be applied by manufacturers, without determinations by NHTSA and with relative certainty and ease. They will likely result in fewer disputes and complaints—which the agency does not have the resources to address. In contrast, case-by-case determinations of what is ''reasonable'' under particular circumstances are likely to involve knotty questions of what the manufacturer knew at various times and what a ''reasonable'' consumer would have done at various times. These can be difficult to resolve, and their resolution would be likely to delay the reimbursement program—a result which is not supported by the legislation.

We believe that bright-line rules for determining reasonable times will ordinarily allow manufacturers to administer the pre-notification remedy reimbursement program without NHTSA's involvement. Under today's proposal, there would be no agency involvement in the resolution of disputes between manufacturers and owners. Except for review of the manufacturer's remedy program, NHTSA will remain outside of the process because the agency simply does not have the resources to address individual reimbursement disputes. We seek comments on ways to minimize disputes.

We further believe that the determination of a reasonable time should be related to the statutory concerns underlying the remedy of noncompliances with Federal motor vehicle safety standards and safety-related defects and, where applicable, to the agency's investigative activities with respect to alleged noncompliances and defects.

NHTSA's Office of Vehicle Safety Compliance (OVSC) conducts investigations to determine if motor vehicles or motor vehicle equipment meet the Federal motor vehicle safety standards codified in 49 CFR part 571. An important element of this program is examination or testing of a vehicle or item of motor vehicle equipment. If the agency's examination or testing indicates a possible noncompliance, the agency advises the manufacturer. The testing or examination is a critical event. If the manufacturer does not rebut the *prima facie* noncompliance shown in NHTSA observations or testing, it will ordinarily determine that a noncompliance exists, file a report under 49 CFR part 573, and then conduct a recall. If the manufacturer does not do so, the agency will conduct an investigation and proceed, if appropriate, to a determination of noncompliance. Alternatively, a noncompliance determination may be based on a manufacturer's testing or observation.

NHTSA's Office of Defects Investigations (ODI) conducts investigations to determine if a motor vehicle or item of motor vehicle equipment contains a safety-related defect. A safety defect investigation may involve several major phases. First, information is gathered from consumer reports, complaints and letters that are received by NHTSA through its Auto Safety Hotline (a telephone hotline), website, or written communications. Pursuant to section 3(b) of the TREAD Act, ODI will be able to consider other forms of early warning information. Based upon the available information, ODI may open a defect investigation.

In most cases, the initial phase of such an investigation is known as a Preliminary Evaluation (PE). During a PE, the manufacturer is contacted and required to provide information and other materials to ODI that are then reviewed and analyzed. PEs are generally resolved within four months, either by a manufacturer recall, an ODI decision to close the investigation, or by upgrading the investigation to an engineering analysis (EA). Engineering analyses may also be opened on the basis of recall queries (RQ) or service queries (SQ). During an EA, ODI obtains additional information from the manufacturer pertaining to the alleged problem. ODI may also undertake engineering studies and surveys, and it often performs tests on the vehicle or equipment at issue. The goal is to complete an engineering analysis within one year. If a potential safety-related defect is identified by ODI at the conclusion of the EA, and the manufacturer does not agree to conduct a recall to address it, the agency may proceed to a formal defect determination, which is accompanied by a recall order.

Some defect and noncompliance recalls are initiated by manufacturers under 49 U.S.C. 30118(c) after NHTSA has opened an investigation or other inquiry (we refer to these as influenced recalls). Others are initiated by manufacturers on their own, in the absence of any NHTSA involvement (we refer to these as uninfluenced recalls). Relatively few recalls are ordered by NHTSA under 49 U.S.C. 30118(b).

We are proposing to base our definition of ''reasonable time'' for purposes of section 6(b) of the TREAD Act on the above-described processes. With respect to a noncompliance with a Federal motor vehicle safety standard, we propose that the period that is reasonable for reimbursement purposes begins on the date of the initial test failure or the initial observation of a possible noncompliance. For noncompliance recalls that are influenced by OVSC, the date of the initial test failure will be apparent. With respect to noncompliance recalls that are not influenced by OVSC, 49 CFR 573.5(c)(7) requires manufacturers to identify ''the test results or other data'' that led to the manufacturer's determination. We are proposing an amendment to this language to require the manufacturer to specify the date when it first identified the possibility that a noncompliance existed.

With respect to influenced defect recalls, we believe that the opening of an EA by ODI is a relevant stage for the beginning of the reimbursement period. At this stage, there is sufficient concern about the matter within ODI that the investigation has been upgraded from a preliminary stage. NHTSA seeks to resolve the investigation within one year of the opening of the EA, by either a determination that a safety-related defect exists or the closure of the investigation. Some investigations will take less time, while some

investigations will take longer than one year after the opening of an EA.

Circumstances surrounding uninfluenced defect recalls are different from influenced recalls. There is no readily identifiable event comparable to the opening of an EA that may be used for the beginning of the period for reimbursement. Nonetheless, on the whole, we believe that the pre-notification time period for uninfluenced recalls should be comparable to that for influenced recalls. Based on NHTSA's goal of one year for resolving EAs, we are proposing that the time period for uninfluenced recalls should begin one year before the date of the manufacturer's Part 573 notice.

On this basis, we are proposing that the ''reasonable time'' for purposes of section 6(b) in regard to safety-related defects runs from the date an EA was opened or, if an EA was not opened, one year before the date of the manufacturer's submission a notification to NHTSA pursuant to 49 U.S.C. 30118 and 49 CFR 573.5.

The final question is when does the period of ''reasonable time'' end. The Act refers to costs incurred in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. Those subsections refer to notices to owners, purchasers and dealers, as well as to NHTSA. In concept, the period should end when the owner receives notice from the manufacturer under 49 CFR part 577. After the owner receives notice, the owner should act in accordance with the provisions in the notice from the manufacturer, and if he or she acts otherwise, he or she should not be reimbursed under a reimbursement rule. However, there are several practical difficulties with this conceptual approach. First, the date on which an owner actually receives notice of the recall is not known by the manufacturer. Thus, an actual notice rule could result in a potentially open-ended reimbursement period if the owner alleged that he or she did not receive a notice. In view of these concerns, we propose the following end dates for the period of reimbursement, regardless of whether the notice is predicated upon a safety-related defect or a noncompliance with a Federal motor vehicle safety standard. For motor vehicles, the end date would be ten days after the manufacturer mailed the last of its initial Part 577 notices (to allow for mail delivery). This is based on the general effectiveness of mailings of Part 577 notices regarding vehicles and the recognition that in large recalls the notices are not all mailed at the same time.

Our approach to replacement equipment would be different from that for motor vehicles because of the difficulties inherent in notifying owners of replacement equipment. In contrast to motor vehicles, which are registered by the states, replacement equipment is not registered by a governmental entity. Even in the case of child restraints, for which NHTSA requires manufacturers to maintain a database of consumers who choose to register their seats, only approximately 30 percent of purchasers return the registration cards to the manufacturer, and many restraints are transferred from the original owner to subsequent owners who do not register the seats. For these reasons, we usually require manufacturers of replacement equipment to publicize the existence of safety defects and noncompliances through press releases, advertisements, website notices, notices in stores that sell the items, etc. Accordingly, for replacement equipment, we are proposing that the end date of the reimbursement period would be the 30 days after the conclusion of the manufacturer's initial efforts to publicize the existence of the defect or noncompliance.

We seek comments on whether other triggers or time periods would be more appropriate.

D. What ''Reasonable Conditions'' May Be Established by a Reimbursement Plan?

Section 6(b) of the TREAD Act does not specify in detail what must be included in a manufacturer's reimbursement plan. Rather, the section states, ''The Secretary may prescribe regulations establishing * * * reasonable conditions for the reimbursement plan.'' We are proposing regulations that would allow manufacturers to include certain provisions limiting reimbursement in the plan. However, manufacturers may impose less stringent restrictions on reimbursement if they choose to. To assure that manufacturers do not unduly restrict reimbursement, we are proposing to preclude other conditions.

As discussed below, we are proposing several permissible conditions which, generally stated, relate to: (1) the availability of free warranty coverage, (2) the nature of the pre-notice repair or replacement and its relationship to the defect or noncompliance; (3) the amount of the reimbursement, and (4) the provision of suitable documentation for reimbursement. The plan could not include other conditions, except, based on comments, possibly some relating to fraud. These conditions are discussed in detail below.

1. Remedies Performed Outside the Period of Free Remedy Warranty Coverage

One condition that a manufacturer may include in its reimbursement program under today's proposal is that the pre-notification remedy must have been performed or obtained after the conclusion of any warranty that would have covered the repair at no cost to the consumer. Many repairs to address conditions that are subsequently determined to constitute a safety defect are within the coverage provided by the manufacturer's warranty program. The purpose of the reimbursement plan is not to create a duplicate of the manufacturer's warranty program. The purpose is to provide a system, that includes reasonable conditions, to reimburse an owner who has incurred costs to obtain a repair or replacement of the product before notification that a defect or noncompliance exits.

Under a typical warranty program, the manufacturer (through its dealers) will perform the necessary repairs or take other appropriate action at no cost to the owner. This creates an incentive for an owner to return his or her vehicle or equipment promptly to a franchised dealer or other authorized establishment to remedy any problems, including potential safety-related problems, while covered under the warranty program. The warranty program also provides information to the manufacturer that it can consider regarding the performance of its product and that might be reported to NHTSA under the ''early warning'' regulation to be adopted under section 3(b) of the TREAD Act, 49 U.S.C. 30166(m). Under today's proposal, manufacturers could provide in their remedy program that consumers who could have obtained a free remedy from a franchised dealer or other authorized entity through the manufacturer's warranty program, but had repairs performed elsewhere, would not be eligible for reimbursement.

This exclusion from the reimbursement program would not be absolute. In particular, if an owner presented the vehicle or equipment to a person authorized to perform warranty work and that person concluded that the problem or repair was not covered under the warranty, or the repair did not remedy the problem, an owner would have to be reimbursed for the reasonable costs of a remedy that was subsequently obtained at a facility that is not an authorized warranty service provider.

We seek comments on whether other exclusions related to warranty coverage are warranted.

2. The Nature of the Pre-notification Remedy

We are proposing conditions that a manufacturer may impose in the reimbursement plan on those pre-notification remedies that would be eligible for reimbursement under the manufacturer's plan. We are using the term eligible as a shorthand characterization that the pre-notification remedy would satisfy the technical conditions for reimbursement, which are addressed below.

First, a manufacturer would be permitted to limit reimbursement to remedies that addressed the noncompliance or defect. The defect or noncompliance is described in part 573 information reports and in notifications to owners. See 49 CFR 573.5(c)(5), (c)(8)(i); 49 CFR 577.5(e). The rationale for this condition is straightforward: manufacturers should not be required to pay for repairs that did not address the problems addressed by the recall.

As a second condition, a manufacturer could limit the extent of repairs that are eligible to those that were reasonably necessary to correct the underlying problem. For example, if the defect was a failing ignition switch, under today's proposal the manufacturer would not have to pay for a replacement of a steering column unit that included the switch, unless that was the only pre-notification repair available to the owner.

However, a manufacturer could not provide that to be eligible a repair would have to be *identical* to the recall remedy. In many instances, the part used in the recall would not have been available before the recall. In these circumstances, the pre-recall repair would necessarily have involved the installation of a part that was different from the remedy part. In fact, prior to a recall, repair facilities often replace inadequate original equipment parts with replacement parts that are identical to the original parts. If those parts were defective or otherwise contributed to defective performance, they would be redesigned for purposes of the recall. Another alternative remedy sometimes employed by manufacturers is a specially designed repair kit. These, too, are not available before the recall.

Additionally, the reimbursement program could not preclude a vehicle owner from obtaining both the recall remedy free of charge and reimbursement for past expenses, where otherwise allowed. For example, assume that an owner replaced an item of original equipment with the same part. If the recall remedy is to install a new part made of a material with better properties than the original part, the owner would be entitled to the free recall remedy and to be reimbursed for the cost of pre-recall repair.

Third, the manufacturer of a vehicle could limit reimbursement to costs incurred for the same *type* of remedy as selected by the manufacturer. The general categories of remedies are set forth in 49 U.S.C. 30120(a)(1). For vehicles, this includes repair, replacement of the vehicle with an identical or reasonably equivalent vehicle, or refunding the purchase price less depreciation. Under 49 U.S.C. 30120(a)(1)(A), manufacturers are permitted to choose the remedy. (If the remedy is found to be inadequate, NHTSA may order an alternate remedy. 49 U.S.C. 30120(e)).

For vehicles, if the manufacturer's remedy was a repair, the manufacturer could limit the scope of reimbursement to pre-notification repairs, and not provide reimbursement for the cost of replacement of the vehicle. Since almost all vehicle recalls involve some form of repair, typically the costs to be covered under the reimbursement plan would be for repairs that addressed the defect or noncompliance. Ordinarily this involves parts, associated labor, miscellaneous fees (*e.g.*, disposal of waste) and taxes.

Today's proposal treats replacement equipment differently from motor vehicles with regard to the relationship between the recall remedy and the pre-notice remedy. To begin, problems with vehicles and equipment are addressed differently by owners and businesses. Almost without exception, both recall remedies for defects and noncompliance in vehicles and pre-recall actions taken by consumers to address vehicle problems involve repair. That is not the case for replacement equipment. Although many equipment recalls involve replacement of the defective or noncompliant item, some do not. Yet owners who experience pre-recall problems with replacement equipment will ordinarily replace the equipment rather than have it repaired. In part, this stems from the cost of the items and the availability, effectiveness, and acceptability of repair. Vehicles are very expensive, and repair is the ordinary solution to a problem. On the other hand, many items of replacement equipment are not expensive, and repairs may not be available.

For example, noncompliant and defective tires, lighting equipment, motorcycle helmets, and brake hoses generally are replaced, not repaired. For child seats, sometimes repair kits are developed for recalls. However, these repair kits ordinarily are not available during most or all of the pre-recall period that is relevant under today's proposal. Even if a repair kit were available, an owner who experienced a problem might reasonably elect not to have the seat repaired. For example, assume that the handle locking mechanism on an infant restraint failed, creating a potential for the infant to fall out of the restraint. Ordinarily, the owner would not be able to repair it, but instead would purchase a different child seat. In light of circumstances such as these, we believe it reasonable to require the manufacturer to reimburse an owner for the cost of a replacement that he or she had obtained prior to the defect determination, regardless of the recall remedy (*e.g.*, in the above example, a handle locking mechanism repair kit). However, the owner would not also be entitled to the recall remedy, since the owner would have been made whole by reimbursement for the new seat.

We believe that additional conditions may be warranted for child seats. Consider the following example. An owner of an infant child seat covered by a defect recall may have previously purchased a convertible seat because his or her child outgrew the infant seat, rather than replacing the seat because of a problem with the handle. We believe that the manufacturer should not be required to reimburse such an owner for the cost of the second seat. However, we are not sure of the best way to allow manufacturers to identify situations like this in which reimbursement would not be appropriate, yet to assure that manufacturers do not deny reimbursement where it is warranted. Thus, we seek comment on possible conditions on pre-notification reimbursement in connection with child seats. These include, but are not limited to, whether to allow reimbursement to be conditioned on whether an owner registered the seat with the child seat manufacturer, whether the receipt indicating the purchase of a replacement seat must indicate that it is a model comparable to the original seat, and whether to require the owner of a defective seat to return it to the manufacturer or otherwise prove it has been destroyed in order to obtain reimbursement. We also seek comments on the practical applications of this proposal.

E. Amount of Reimbursement

Beyond the general considerations addressed above regarding remedies for which reimbursement must be provided, we are proposing requirements related to the amount of reimbursement to be provided.

For vehicles, almost without exception, the reimbursement will be

for the costs incurred by the owner to repair or replace the component or system implicated in the defect or noncompliance determination. While there are two other statutorily-authorized types of remedy for defects and noncompliances in motor vehicles—replacement and refund—in practice these types of remedies are extremely rare. Ordinarily, the amount of reimbursement for a repair could not be less than the lesser of (a) the amount actually paid by the owner for an eligible remedy, or (b) the cost of parts for an eligible remedy, labor at local labor rates, miscellaneous fees such as disposal of wastes, and taxes. Costs for parts may be limited to the manufacturer's list retail price for authorized parts. Any associated costs, such as taxes or disposal of wastes may not be limited. This proposed rule does not address, and under this proposed rule manufacturers would not have to provide, reimbursement for consequential injuries and damages such as personal injuries, property damages, rental vehicles, or missed employment. However, the proposed rule would not affect an aggrieved party's right to bring a civil action for any consequential damages that may arise as a result of the problem that was remedied by the owner.

Not all costs of repairs of vehicles would have to be reimbursed. For example, if a custom-designed replacement part was machined and installed, the cost of the custom-designed replacement part would not be reasonable and therefore would not have to be reimbursed. In instances where there are multiple repairs in one service visit, only those repairs that addressed the problem that was ultimately determined to constitute a safety-related defect or noncompliance would be reimbursable.

Even if a vehicle repurchase or replacement remedy is offered by the manufacturer, the owner would only be eligible for reimbursement of the costs associated with the pre-notification repairs. Of course, if the owner continues to own the vehicle, he or she would also be entitled to repurchase or replacement. We note that even if an individual had sold the vehicle prior to being notified of the recall, he or she would be eligible to be reimbursed for any repair costs related to the defect or noncompliance.

With regard to replacement equipment, as noted above, replacement is a very common remedy prior to notice. The amount of reimbursement ordinarily would be based upon the amount paid by the owner for the replacement item, as indicated on a receipt, up to the total of the retail price of the item, plus taxes. In some instances, labor would also be included. In cases in which the owner purchased a brand or model different from the equipment that was the subject of the recall, the manufacturer would be permitted to limit the amount of reimbursement to the ordinary retail price of the defective or noncompliant model that was replaced, plus taxes.

F. How To Obtain Reimbursement

1. What Documentation Must the Owner Submit in Order To Obtain Reimbursement?

We are proposing to allow manufacturers to establish certain requirements with respect to requests for reimbursement for pre-notification remediation of a defect or noncompliance in motor vehicles or motor vehicle equipment. Manufacturers may require an owner to present documentation that shows: (1) The name and mailing address of the owner; (2) product identification information, which means (a) for vehicles, the vehicle make, model year (MY) and model as well as the vehicle identification number (VIN), (b) for replacement equipment other than tires, a description of the equipment, including model and size as appropriate, and, (c) for tires, the model, size, and DOT number of the replaced tire(s); (3) identification of the recall (either the NHTSA recall number or the manufacturer's recall number); (4) a receipt (an original or a copy) that provides the amount of reimbursement sought; for repairs, this would include a breakdown of the amounts for parts, labor, other costs and taxes; for replacements, this would include the cost of the replacement item and associated taxes (where the receipt covers work other than to address the defect or noncompliance, the manufacturer may require the owner to separately identify the costs that are eligible for reimbursement); and (5) if the owner seeks reimbursement for costs within the warranty period, documentation to support either the denial of a repair under warranty or of the failure of a warranty repair followed by a repair at a non-franchised or unauthorized facility.

The manufacturer could provide that, to receive reimbursement, costs must be itemized by parts and labor on a proper receipt. We have selected these documentation provisions to ensure, reasonably effectively, that the vehicle or equipment is covered by a recall, that the reimbursement sought is related to the defect or noncompliance and not to other expenses, that multiple claims for the same work are not presented, and that the reimbursable costs are identified. Ordinarily, further requirements, such as requiring the owner to preserve or present the defective or noncompliant parts to the manufacturer, would be impracticable and unduly burdensome on the owner. We request comments on appropriate reimbursement provisions, including any reasonable provisions related to prevention of fraud. Additionally, we request comments on whether a receipt will provide sufficient information to a manufacturer to determine if the owner's remedy addressed the defect and whether it was reasonable. If not, what other information would be appropriate?

2. To Whom Must the Documentation Be Submitted?

The manufacturer must identify the office, including its address, to which the documentation is to be submitted.

3. May the Manufacturer Establish a Cut-Off Date for Reimbursement Claims?

We believe that there should be some limit on the ability of a manufacturer to establish a cut-off date for submission of claims for reimbursement. One approach is to base the minimum time frame on the period during which the recall campaign is subject to quarterly reporting pursuant to 49 CFR 573.6. That section requires each manufacturer that conducts a defect or noncompliance campaign to provide a quarterly report to NHTSA for six consecutive calendar quarters beginning with the quarter in which the campaign was initiated. Another approach is to set a fixed period applicable to all recalls; e.g., 90 days after the end of the reimbursement period, as defined above. This approach would require manufacturers to identify the outside end date for the submission of claims for reimbursement in the part 577 letter to owners. This outside end date would not be based upon 90 days from the date the letter is sent to each individual owner, rather the outside end date would be based upon the date the manufacturer reasonably believes the notification campaign would be completed. Thus, the outside end date for the submission of claims for reimbursement would be 90 days from the date of the last notification letter sent to owners under part 577. We are proposing the latter approach, but would like to receive comments on whether a different period would be more appropriate.

4. When and How Must an Owner Receive Reimbursement?

We are proposing to require manufacturers to act upon reimbursement claims within a reasonable time from the date a complete claim is received. We have tentatively decided that this period should be 60 days. The action may either be a grant or a denial of the claim for reimbursement.

In the event that a manufacturer receives a claim for reimbursement for a pre-notification remedy that contains deficient documentation, the manufacturer would be required to advise the claimant within 30 days that his or her claim is deficient and provide an explanation of the documents that are needed to make the claim complete and that such supplemental documents must be submitted within an additional 30 days. If the owner does not provide the required information within that 30 day period, the manufacturer may deny the claim.

If the manufacturer determines that a claim for reimbursement will not be paid in full, it must clearly advise the owner, in plain language, the reasons for the denial. NHTSA will not mediate, adjudicate, or otherwise review any disputes between manufacturers and consumers regarding eligibility for, or the amount of, reimbursement.

G. How Is the Owner Notified of the Reimbursement Plan?

The inclusion of a reimbursement plan in a manufacturer's remedy program would have little effect unless owners were aware of their right to obtain such reimbursement. Therefore, we believe that manufacturers must include certain information about the availability of reimbursement for the costs of pre-notification remedies in the notification to owners required under 49 CFR part 577.

There are several possible approaches to this issue. We could require manufacturers to include a copy of the plan in each notification sent to owners. Alternatively, we could amend part 577 to require manufacturers to describe their reimbursement plans in some detail or we could actually mandate particular language that manufacturers would have to use in their owner notifications. In view of the detail needed to fully describe the circumstances under which reimbursement would or would not be allowed, the amount of information included under each of these alternatives could exceed the safety-critical information about the defect or noncompliance itself. We are concerned that a lengthy description of the reimbursement program would run the risk of detracting from an owner's awareness of the need to have the remedy work performed. This imbalance in individual notices would be exacerbated by the inapplicability of the reimbursement provisions to the vast majority of owners, who ordinarily would not have incurred reimbursement expenditures. Therefore, we are proposing that the part 577 owner notification letter would need to identify the possibility of reimbursement for costs incurred to remedy problems related to the recall between certain dates, specify the date by which the owner must submit a claim for reimbursement, and identify ways that owners who may be eligible can review or timely obtain a copy of the manufacturer's reimbursement plan. (Although, as stated above, the actual end date of the period for reimbursement would not be tied to any given owner's receipt of a part 577 letter, to avoid confusion, we are proposing that the manufacturer would provide the date of receipt of the part 577 letter to identify the period in question.) To assure that those plans are available to owners, we are proposing that the part 577 letter would have to identify an Internet Website address maintained by the manufacturer where the plan applicable to the recall in question can be found, and would have to state that the plan could also be obtained by calling the manufacturer at a specified (toll-free) telephone number or by writing to the manufacturer at a specified address, and specify the date by which the owner would have to request the plan in order to receive it in time to complete the request for reimbursement. We request comment on whether this approach will provide owners with adequate information about the possibility of reimbursement for the cost of pre-recall remedies, and whether the specific language that we have proposed can be improved. Additionally, we seek comment whether this approach is a reasonable way to advise vehicle owners of the possible availability of and requirements for reimbursement; i.e., will the owner understand how to obtain reimbursement if this approach is chosen and be able to timely submit a complete reimbursement claim. We also ask for comments concerning alternatives that might be preferable to the proposal with the reasons for, and information relating to, any alternatives. We also seek comments on whether a Website and a toll-free telephone number will provide owners with sufficient, clear information.

H. Nonapplication

To be consistent with the statutory limitation found in 49 U.S.C. 30120(g), the requirement that reimbursement for a pre-notification remedy be provided to an owner does not apply if, in the case of a motor vehicle or replacement equipment, it was bought by the first purchaser more than 10 calendar years, or in the case of a tire, including an original equipment tire, it was bought by the first purchaser more than 5 calendar years, before notice is given under 49 U.S.C. 30118(c) or an order is issued under section 49 U.S.C. 30118(b).

I. General Plans for Reimbursement

We are proposing to allow manufacturers to submit to the agency one or more general reimbursement plans that could be incorporated by reference into any recalls associated with their products, rather than submitting a separate reimbursement plan for each recall. The reimbursement plan would remain on file with the agency and be available to consumers for their review. Under this proposal, the manufacturer would have to update such plans at least every two years to provide consumers with current information. If this proposal were adopted, manufacturers would not have to submit a separate reimbursement plan to NHTSA for each recall. We seek comments on whether this proposal is workable.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this proposed rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking is not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves reimbursement of eligible expenses to owners who paid to remedy a defect or noncompliance prior to the recall notification.

We estimate that the additional economic impact of this rule upon manufacturers will be small. First, although we cannot precisely estimate the number of owners who have made related repairs prior to a manufacturer's

defect or noncompliance determination, we believe the number is relatively small. One indicator would be the number of complaints received by the manufacturer. Our review of a sample of part 573 reports from the past year indicates that manufacturers often have not received many complaints from owners about the problem prior to making a defect or noncompliance determination. Second, most manufacturers already provide reimbursement for pre-recall repairs under warranty programs and some other circumstances. Finally, one of the conditions that manufacturers may establish under today's proposed rule is that the pre-notification purchase or repair must be outside of the warranty period. Generally, manufacturers offer a warranty program that covers a period of 36 months or 36,000 miles. History indicates that most recalls occur within the period of coverage under warranty programs. In 2000, there were 672 recalls conducted by vehicle and equipment manufacturers. Of these, only 41 (approximately 6%) occurred after the expiration of the period of coverage offered by the manufacturer under its warranty program. Conversely, the remaining 94% occurred within 36 months which is the most common warranty period.

B. Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves motor vehicle and equipment manufacturers that have submitted defect or noncompliance reports. The majority of recalls are not initiated by small entities. The primary impact of this rule will be felt by the major vehicle manufacturers. Even this impact will be minor since it only involves owners of vehicles and motor vehicle equipment who have paid to remedy a defect or noncompliance prior to recall in a manner that warrants reimbursement under the rule. This number is expected to be small for the reasons stated in the prior section of this notice.

C. National Environmental Policy Act

We have analyzed this proposal under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

NHTSA has determined that this proposed rule will impose new collection of information burdens within meaning of the Paperwork Reduction Act of 1995 (PRA).

E. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us 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.'' The E.O. defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule, which would require that manufacturers include a reimbursement plan in their remedy program for owners who have remedied a defect or noncompliance prior to a recall notification under either section 30118(b) or 30118(c) of the Safety Act, will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. This rule making does not have those implications because it applies only to manufacturers who are required to file a remedy plan under sections 30118(b) or 30118(c), and not to the States or local governments.

F. Civil Justice Reform

This proposed rule would not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule would not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this rule.

IV. Submission of Comments

A. How Can I Influence NHTSA's Thinking on This Rule?

In developing this interim final rule, we tried to address the anticipated concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on it, new approaches we have not considered, new data, how this rule may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

—Explain your views and reasoning as clearly as possible.
—Provide solid information to support your views.
—If you estimate potential numbers or reports or costs, explain how you arrived at the estimate.
—Tell us which parts of the rule you support, as well as those with which you disagree.
—Provide specific examples to illustrate your concerns.
—Offer specific alternatives.
—Refer your comments to specific sections of the rule, such as the units or page numbers of the preamble, or the regulatory sections.
—Be sure to include the name, date, and docket number with your comments.

B. How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your

comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

C. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

D. How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel (NCC–30), NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

E. Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

F. How Can I Read the Comments Submitted by Other People and Other Materials Relevant to This Rulemaking?

You may view the materials in the docket for this rulemaking on the Internet. These materials include the written comments submitted by other interested persons and the preliminary regulatory evaluation prepared by this agency. You may read them at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments and materials on the Internet. To read them on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2000–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the materials in the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Parts 573 and 577

Motor vehicle safety, Reporting and record keeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 573 and part 577 as set forth below.

PART 573—DEFECT AND NONCOMPLIANCE REPORTS—[AMENDED]

1. The authority citation for Part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. Part 573.5 would be amended by revising paragraphs (c)(7) and (c)(8)(i) to read as follows:

§ 573.5 Defect and noncompliance information report.

* * * * *

(c) * * *

(7) In the case of a noncompliance, the test results or other data on the basis of which the manufacturer determined the existence of the noncompliance. The manufacturer shall identify the date of each test and observation that indicated that a noncompliance might exist.

(8)(i) A description of the manufacturer's program for remedying the defect or noncompliance. This program shall include a plan for reimbursing an owner or purchaser who incurred costs to obtain a remedy for the problem addressed by the recall within a reasonable time in advance of the manufacturer's notification of owners, purchasers and dealers, in accordance with § 573.13. A manufacturer may incorporate by reference one or more comprehensive reimbursement plans submitted to NHTSA for its entire product line rather than submitting a complete, separate plan for each individual recall. If a manufacturer submits one or more comprehensive plans, the manufacturer shall update each plan every two years. The manufacturer's program will be available for inspection in the public docket, Room 5109 Nassif Building, 400 Seventh St., SW., Washington, DC 20590.

* * * * *

3. Part 573 would be amended by adding § 573.13 to read as follows:

* * * * *

§ 573.13 Reimbursement for pre-notification remedies.

(a) Pursuant to 49 U.S.C. 30120(d) and § 573.5(c)(8)(i), this section specifies requirements for a manufacturer's plan to reimburse owners for costs incurred for remedies in advance of the manufacturer's notification under subsections (b) or (c) of 49 U.S.C. 30118.

(b) For purposes of this section, ''pre-notification remedy'' means a remedy that is obtained by an owner of a motor vehicle or item of replacement equipment for a problem subsequently addressed by a notification under subsection (b) or (c) of 49 U.S.C. 30118 and that is obtained during the period for reimbursement specified in paragraph (c) of this section.

(c) The manufacturer's plan shall specify a period for reimbursement, as follows:

(1) The beginning date shall be no later than a date determined as follows:

(i) For a noncompliance with a Federal motor vehicle safety standard, the date shall be the date of the first test or observation by either NHTSA or the

manufacturer indicating that a noncompliance may exist.

(ii) For a safety-related defect that is determined to exist following the opening of an Engineering Analysis (EA) by NHTSA's Office of Defects Investigation (ODI), the date shall be the date the EA was opened.

(iii) For a safety-related defect that is determined to exist in the absence of the opening of an EA, the date shall be one year before the date of the manufacturer's notification to NHTSA pursuant to § 573.5.

(2) The ending date shall be no sooner than:

(i) For motor vehicles, 10 calendar days following the date on which the manufacturer mailed the last of its notifications to owners pursuant to part 577 of this chapter.

(ii) For replacement equipment, 30 days after the conclusion of the manufacturer's initial efforts to publicize the existence of the defect or noncompliance.

(d) The manufacturer's plan shall provide for reimbursement of costs for pre-notification remedies, subject to the conditions established in the plan. The following conditions and no others may be established in the plan.

(1) The plan may exclude reimbursement for costs incurred within the period during which the manufacturer's warranty would have provided for a free repair of the problem addressed by the recall, unless a franchised dealer or authorized representative of the manufacturer denied warranty coverage or the repair did not remedy the problem addressed by the recall.

(2)(i) For a motor vehicle, the plan may exclude reimbursement:

(A) If the pre-notification remedy was not of the same type (repair, replacement, or refund of purchase price) as the recall remedy:

(B) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the recall; or

(C) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance or the manifestation of the recall.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(A).

(3)(i) For replacement equipment, the plan may exclude reimbursement:

(A) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the recall; or

(B) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance or the manifestation of the recall.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(B).

(4) The plan may exclude reimbursement if the owner did not submit adequate documentation to the manufacturer at a designated address within ninety (90) days of the end of the period for reimbursement. The plan may require, at most, the following documentation:

(i) Name and mailing address of the claimant;

(ii) Identification of the product:

(A) For motor vehicles, the vehicle make, model, model year, and the vehicle identification number;

(B) For replacement equipment other than tires, a description of the equipment, including model and size as appropriate; or

(C) For tires, the model, size, and the DOT number;

(iii) Identification of the recall (either the NHTSA recall number or the manufacturer's recall number);

(iv) A receipt for the pre-notification remedy, which may be an original or copy:

(A) If the reimbursement sought is for a repair, the manufacturer may require that the receipt state the total amount paid for the repair of the problem addressed by the recall, including a breakdown of the amount for parts, labor, other costs and taxes; and

(B) If the reimbursement sought is for the replacement of a vehicle part or an item of replacement equipment, the manufacturer may require that the receipt state the total amount paid for the item that replaced the defective or noncompliant items; and

(v) If the pre-notification remedy was obtained at a time when the vehicle or equipment could have been repaired or replaced at no charge under a manufacturer's warranty program, the manufacturer may require the owner to provide documentation indicating that the manufacturer's dealer or authorized facility either refused to remedy the problem addressed by the recall under the warranty or that the warranty repair did not correct the problem addressed by the recall.

(e) The manufacturer's plan shall specify the amount of costs to be reimbursed for a pre-notification remedy.

(1)(i) For motor vehicles, the amount of reimbursement shall not be less than the lesser of:

(A) The amount paid by the owner for the remedy; or

(B) The cost of parts for the remedy, plus associated labor at local labor rates, miscellaneous fees such as disposal of waste, and taxes. Costs for parts may be limited to the manufacturer's list retail price for authorized parts.

(ii) Any associated costs, such as taxes or disposal of wastes may not be limited.

(2) For replacement equipment, the amount of reimbursement ordinarily would be the amount paid by the owner for the replacement item, including taxes. In cases in which the owner purchased a brand or model different from the equipment that was the subject of the recall, the manufacturer may limit the amount of reimbursement to the ordinary retail price of the defective or noncompliant item that was replaced, plus taxes. If the equipment was repaired, the provisions of paragraph (e)(1) of this section apply.

(f) The manufacturer's plan shall identify the office or individual to whom claims for reimbursement shall be submitted.

(g) The manufacturer shall act on requests for reimbursement as follows:

(1) The manufacturer shall act upon a claim for reimbursement within 60 days of its submission. If the manufacturer denies the claim, the manufacturer must send a notice to the claimant within 60 days of submission that includes a clear, concise statement of the reasons for the denial.

(2) If a claim is incomplete when originally submitted, the manufacturer shall advise the claimant within 30 days of the submission the documentation that is needed and offer an opportunity to resubmit the claim with completed documentation. If the owner does not do so within 30 days thereafter, the manufacturer may deny the claim.

(h) Any disputes over the denial in whole or in part of a claim for reimbursement shall be resolved between the claimant and the manufacturer. NHTSA will not mediate or resolve any disputes regarding eligibility for, or the amount of, reimbursement.

(i) The manufacturer shall implement each plan for reimbursement under this section in accordance with its terms.

(j) The requirement that reimbursement for a pre-notification remedy be provided to an owner does not apply if, in the case of a motor vehicle or replacement equipment other than a tire, it was bought by the first purchaser more than 10 calendar years before notice is given under 49 U.S.C. 30118(c) or an order is issued under section 49 U.S.C. 30118(b). In the case

of a tire, this period shall be 5 calendar years.

* * * * *

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION—[AMENDED]

1. The authority citation for Part 577 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. Part 577 would be amended by adding § 577.11 to read as follows:

§ 577.11 Reimbursement notification.

(a) When a manufacturer of motor vehicles or replacement equipment is required to provide notice in accordance with §§ 577.5 or 577.6, in addition to complying with other sections of this part, the manufacturer shall notify owners that they may be eligible to receive reimbursement for the cost of obtaining a pre-notification remedy of a problem associated with a defect or noncompliance consistent with the manufacturer's reimbursement plan submitted to NHTSA pursuant to §§ 573.5(c)(8)(i) and 573.13 of this chapter.

(b) The manufacturer's notification shall include the following language, with the information described in brackets filled in fully and appropriately: ''If you paid to obtain a remedy for the problem covered by this recall between [the beginning of the period for reimbursement identified in the plan] and the date you received this letter, you may be eligible to have some or all of those costs reimbursed. To see whether you are eligible for such reimbursement, you can review or obtain [manufacturer's] reimbursement plan at [the specific Internet address (Uniform Resource Locator) for the plan applicable to the recall], by calling [manufacturer] at [the manufacturer's toll-free telephone number], or by writing to [manufacturer] at [address]. All claims for reimbursement must be submitted no later than [90 days after the end of the period for reimbursement].''

* * * * *

Issued on: December 5, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–30487 Filed 12–10–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–2001–11108]

RIN 2127–AI23

Motor Vehicle Safety; Acceleration of Manufacturer's Remedy Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend regulations that pertain to manufacturers' remedies for defective or noncomplying motor vehicles and replacement equipment in order to implement Section 6(a) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 6(a) provides that the Secretary of Transportation may require a manufacturer to accelerate the manufacturer's remedy program if the Secretary determines that it is not likely to be capable of completion within a reasonable time and the Secretary finds: there is a risk of serious injury or death if the remedy program is not accelerated; and that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both.

DATES: *Comments:* Comments must be received on or before February 11, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

Regardless of how you submit your comments, you should mention the docket number of this document in your comments.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: for non-legal issues, Jonathan White, Office of Defects Investigation, NSA–11, National Highway Traffic Safety Administration, telephone (202) 366–5227; for legal issues, Michael T. Goode, Office of Chief Counsel, NCC–10, National Highway Traffic Safety Administration, telephone (202) 366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2000, the TREAD Act, Pub. L. 106–414, was enacted. The statute was, in part, and as it relates to the specific provision discussed below, a response to congressional concerns related to manufacturers' delays in repairing or replacing motor vehicles or motor vehicle equipment that contain a safety-related defect or fail to comply with a Federal motor vehicle safety standard (FMVSS).

Under 49 U.S.C. 30118(b), the agency may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable Federal motor vehicle safety standard. In addition, under section 30118(c), a manufacturer of a motor vehicle or replacement equipment is required to notify the agency when it determines, or should determine, that a vehicle or equipment contains a defect that is related to motor vehicle safety or the vehicle or equipment does not comply with an applicable safety standard.

Under both circumstances, the manufacturer is required to notify owners, purchasers and dealers of the defect or noncompliance, and to provide a remedy without charge. Section 30119 sets forth statutory requirements for owner notification and requires the manufacturer to give such notice within a reasonable time. See also 49 CFR part 577. However, if a final decision has been rendered under section 30118(b), then the Secretary prescribes the date by which the manufacturer must provide notification.

49 U.S.C. 30120 further provides that a manufacturer of a noncompliant or defective motor vehicle or replacement equipment must repair it or replace it with an identical or reasonably equivalent vehicle or equipment or, in the case of a vehicle, refund the purchase price less depreciation. Under section 30120(c), if a manufacturer decides to repair a defective or noncomplying motor vehicle or replacement equipment and the repair was not done adequately within a reasonable time, the manufacturer is required to replace the vehicle or equipment without charge or, for a vehicle, refund the purchase price. Failure to repair within 60 days after its presentation to a dealer is prima facie evidence of failure to repair or replace within a reasonable time. The agency can extend the 60-day period. This

section also requires the manufacturer to submit its program for remedying a defect or noncompliance to the agency.

49 CFR 573.5(c)(8) requires a manufacturer, as part of its defect and noncompliance information reports submitted to NHTSA, to provide a description of the manufacturer's program for remedying the defect or noncompliance. In 1995, NHTSA amended that section to require a manufacturer to advise NHTSA of the estimated date on which it will begin sending notifications to owners of the defect or noncompliance and that a remedy without charge will be available, as well as the estimated date when the notification campaign will be completed. Section 573.5(c)(8)(ii). In the preamble to the proposed rule that led to the amendment, NHTSA explained that there had been an increase in the number of recalls in which there was a significant delay in the commencement of the remedy campaign, and, in some instances, an inordinate extension of the duration of the campaign. NHTSA further explained that the amendment was necessary in order to assure that the timing and duration of remedy campaigns were appropriate, and also for NHTSA to be able to respond more fully to public questions about the timing of recalls. 58 FR 30817, September 27, 1993.

Section 6(a) of the TREAD Act added a new paragraph (3) to 49 U.S.C. 30120(c), which provides that if the Secretary determines that a manufacturer's remedy program is not likely to be capable of completion within a reasonable time, the Secretary may require the manufacturer to accelerate the remedy program if the Secretary finds: There is a risk of serious injury or death if the remedy program is not accelerated; and acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both.

The agency expects that in the vast majority of recalls, this provision will not be invoked, primarily because in most cases manufacturers implement and complete their remedy programs within reasonable times under the circumstances.

While 49 U.S.C. 30120(c)(3) is effective in the absence of rulemaking, it provides that the Secretary may prescribe regulations to carry it out.

The authority to carry out Chapter 301 of Title 49 of the United States Code, under which the rules directed by the TREAD Act are to be issued, has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

Pursuant to the authorization in 49 U.S.C. 30120(c)(3), we are proposing to amend 49 CFR part 573 to add a new section 573.4. We are also proposing to amend 49 CFR part 577 to add a new section 577.12. Below is a summary and explanation of today's proposed rule.

II. Discussion

A. Who Would Be Required To Comply With Today's Proposal?

This rule would apply to manufacturers of motor vehicles and replacement equipment whose products have been determined to contain a safety-related defect or a noncompliance with a FMVSS. The agency had identified the manufacturing entities who are covered by 49 U.S.C. 30118–30120 in 49 CFR 573.3(a). In view of the above, we are proposing that section 573.3(a)–(f) apply to today's proposed regulation as well.

B. Under What Circumstances May the Administrator Require A Manufacturer To Accelerate Its Remedy Program?

The decision to require a manufacturer to accelerate its remedy program would be a discretionary decision by the Administrator. We are proposing that, to invoke this provision, the Administrator would be required to make two findings and one determination.

Under today's proposed regulation, one required finding, which would be adopted from the statute, would be that there is a risk of serious injury or death if the remedy program is not accelerated. To make this finding, there need only be a risk of such injury or death, not necessarily a high probability, and most safety recalls address circumstances where there is such a risk.

Second, with respect to the statutory requirement of a finding that ''acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both,'' we likewise propose to adopt this statutory phrase as part of the rule.

With regard to the potential expansion of the sources of replacement parts, this finding is most likely to be made when a substantial aftermarket supply capability exists. For example, there are substantial numbers of quality aftermarket parts such as tires, brake rotors, steering and suspension components, and ignition components that can be used on many, if not most, vehicles. Thus, for example, if we were to find that an undue delay in completion of a remedy campaign was due to a manufacturer's inability to produce a sufficient number of brake rotors from its own plants or from its own suppliers, we could require the manufacturer to utilize, or allow owners to utilize, brake rotors from other sources that were appropriate for use on the vehicles in question. On the other hand, it is less likely that this finding would be made where there is no or little aftermarket supply capability for the defective components, such as air bag control units and many ABS brake control units, since the particular specifications of the remedy part may be unique to the particular vehicle or supplier. However, even when there is no aftermarket production of the part to be used as a remedy, the manufacturer may have the ability to expand the sources of replacement parts, such as by contracting with additional suppliers. In addition, in keeping with the congressional goal of assuring that a remedy be provided within a reasonable time, under today's proposal, the addition of assembly lines and/or production shifts within a factory would also be an expansion of the source of the parts within the meaning of section 30120(c)(3)(B).

With regard to the expansion of the number of authorized repair facilities, we note that major vehicle manufacturers have large networks of dealers to perform repairs. Ordinarily, we would not expect to make a finding reflecting the need for these major manufacturers to expand the number of authorized repair facilities. Other vehicle manufacturers, such as importers of limited-production vehicles and multistage vehicle manufacturers, and most manufacturers of equipment items do not have established networks of repair facilities. There have been instances in which an owner would have to travel a large distance to obtain the remedy repair directly from the manufacturer or one of its dealers. This may cause a consumer to delay or even forego the repair. Under the proposed rule we could require such manufacturers to expand the number of repair facilities in order to assure that the campaign is completed in a reasonable time.

Third, with respect to the need for a determination, required by statute, that a manufacturer's remedy program is not likely to be capable of completion within a reasonable time, we propose that reasonableness would be decided in light of all of the circumstances, including the efforts that the manufacturer has made to complete the remedy program, as well as the safety risks associated with the defect or noncompliance.

The statute is silent with respect to when we can require a manufacturer to accelerate its program under section 6(a). In the interests of motor vehicle safety, we believe it appropriate to impose such a requirement at any time that the statutory conditions are found to exist.

We also anticipate that there would be consultation between NHTSA and the manufacturer before a manufacturer would be formally required to accelerate the remedy program, but such consultation is not required by the statute. We further anticipate that in most cases in which we believed that acceleration was appropriate, the manufacturer would take action without being directed to do so by the agency.

C. How Would Acceleration Affect the Nature or Quality of the Remedy?

We would require manufacturers to assure that replacement parts from additional suppliers used under accelerated remedy programs are equivalent to the remedy parts supplied by the manufacturer, so that there will be no difference in the quality of the remedy received by owners. However, in those instances where parts are purchased from manufacturers other than those who would ordinarily supply parts for the vehicle in question, it may be difficult to determine whether or not the part is equivalent. We are proposing that we would have the authority, in appropriate cases, to require manufacturers to provide information to owners with respect to any differences among different brands of replacement parts.

For tires, we believe that there are guidelines available to assure that the tires from alternative sources are at least equivalent. The Uniform Tire Quality Grading System (UTQGS) sets forth three criteria that buyers can use to make relative comparisons among tires. See 49 CFR 575.104. The manufacturer would be required to provide tires of a size and type that are suitable for the owner's vehicle and of the same or better UTQGS rating in each category. Alternatively, a manufacturer could do what Bridgestone/Firestone, Inc. (Firestone) did in connection with the recent recall of millions of Firestone ATX and Wilderness AT tires. Firestone authorized owners to obtain replacement tires of their choice from any tire manufacturer, and agreed to reimburse the owner up to a specified amount per tire. Of course, the reimbursement amount would have to be sufficient to allow for the purchase of a tire that is reasonably equivalent to the defective or noncompliant tire.

As previously indicated, if warranted under the circumstances, we could require a manufacturer to add additional suppliers and/or production lines and/or production shifts in order to increase the number of available remedy parts. In those cases in which the manufacturer identified supplemental repair facilities, it would have to assure that the facility had the parts and expertise needed to adequately perform the remedy.

D. What Would the Manufacturer Be Required To Do After Being Required To Accelerate Its Remedy Program?

The manufacturer would be required to implement the accelerated remedy program as required by the agency. The level of detail and direction may vary. It may include expanding the sources of replacement parts provided to the manufacturer's franchised dealers, expanding the number of authorized repair facilities to include facilities not owned or franchised by the manufacturer that have repair or replacement capabilities. It may include both or other provisions. It may require submission of implementation plans and schedules. Particularly where non-owned or non-franchised facilities are involved, it may include reimbursement requirements, which, are discussed below.

E. What Notice Would the Manufacturer Be Required To Send To Vehicle or Equipment Owners?

This would depend upon the circumstances. If the manufacturer has not sent an initial notification to owners under 49 CFR part 577, relevant information about alternative parts or authorized repair facilities could be included in the initial notification letter. If the manufacturer has sent an initial notification to owners under 49 CFR part 577, the manufacturer would normally be required to send a supplemental letter to all owners except those who have had the remedy performed. Proposed section 577.12 would apply to the scope, timing, form, and content of the notice to be sent by the manufacturer.

F. Accelerated Remedy Programs Involving Reimbursement

In some circumstances, the remedy program could be accelerated without any payment by owners, and there would therefore be no need for reimbursement. In these instances, appropriate financial arrangements would be made between the manufacturer and the dealer or repair facility. For example, when a vehicle is repaired at a dealer who is franchised or authorized by the vehicle manufacturer or when the parts in question (e.g., a tire) are provided by a facility owned or franchised by the manufacturer, the manufacturer would reimburse the dealer for the cost of the parts as well as labor, and the owner would not make a payment. However, in other circumstances, the accelerated program might be structured to allow an owner to obtain the remedy from independent third-party parts suppliers and/or repair facilities, pay that independent entity, and then be reimbursed by the manufacturer.

Reimbursement under an accelerated remedy program would be similar in most respects to the applicable provisions of our proposed regulation implementing section 6(b) of the TREAD Act, codified as the third and fourth sentences of 49 U.S.C. 30120(d) (''pre-notification remedy''). Elsewhere in this issue of the **Federal Register**, we have issued a notice of proposed rulemaking (NPRM) to implement that section. Of course, there are two obvious differences. The effective periods of the respective programs are different. Under the pre-notification remedy program, reimbursement may be available for expenditures before notification of a defect or noncompliance. Under an acceleration of remedy program, reimbursement may be available for expenditures after notification, as provided in the program. Second, under the pre-notification remedy program, reimbursement may be available for a range of remedies that addressed the underlying problem. Under an acceleration of remedy program, reimbursement may not be available at all under the program, and when it is, it may be conditioned on use of a specific remedy. In addition, the acceleration of remedy program may limit the owner to obtaining the remedy at specific service facilities. However, these substantive differences do not affect the application of the general procedures for reimbursement in the pre-notification remedy program. The provisions pertaining to what documentation a manufacturer may require a claimant to submit to obtain reimbursement would be identical to this program, as would be the provisions relating to the amount of reimbursement and the time frame for seeking reimbursement, and the method for owners to obtain a copy of the plan. Since the process governing reimbursement under the two programs would virtually be the same, we see no need to repeat the provisions in this proposal or discuss the provisions here. Interested persons are referred to our discussion of these provisions in the

preamble to the pre-notification remedy NPRM mentioned above. Of course, to the extent that we modify the proposal in that NPRM following public comment, we would make corresponding changes to the applicable provisions of the accelerated remedy rule.

G. Could a Manufacturer Terminate an Accelerated Remedy Program?

We believe that a manufacturer should be able to terminate an accelerated remedy program when the conditions that gave rise to the accelerated program no longer exist. We do not believe that we should require a manufacturer to authorize the use of alternative replacement parts or to reimburse an owner who purchased such parts if the manufacturer is able to provide the recall remedy promptly. Thus, we are proposing that a manufacturer that believes that it can meet all future demand for the remedy through its own mechanisms (*e.g.,* its dealers) may request the agency to authorize it to terminate the accelerated remedy program.

Under the proposal, if NHTSA agrees, the manufacturer could terminate the program, provided that notice is given at least 30 days in advance of the termination date of the accelerated component of the remedy program to all owners of unremedied vehicles or equipment. We invite comment with regard to how such notice should be given.

We are concerned that a notice terminating the accelerated aspect of a recall could confuse an owner or be misinterpreted by an owner as terminating the recall. As a result, the owner might not obtain the remedy, which would compromise motor vehicle safety. We request comment on how to avoid this result.

Regulatory Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking is not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation. We do not foresee substantially increased costs to the manufacturer because of an accelerated remedy program. First, a remedy program already exists. The scope of the remedy program is not being expanded. The only aspects being affected are the time for completion and the alternative sources of the remedy. Second, we expect this provision to be invoked infrequently, since in the large majority of cases the manufacturer's original remedy program will resolve the defect or noncompliance in a timely fashion.

2. Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this proposed rule would not have significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves accelerating a manufacturer's remedy program and the incidence of such an occurrence is expected to be limited.

3. National Environmental Policy Act

We have analyzed this proposal under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

4. Paperwork Reduction Act

NHTSA has determined that this proposed rule will impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (PRA).

5. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us 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.'' The E.O. defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule, which would provide for requiring manufacturers to accelerate a remedy program, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. This rule making does not have those implications because it applies to a manufacturer, and not to the States or local governments.

6. Civil Justice Reform

This proposed rule would not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

7. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this proposed rule would not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this rule.

Submission of Comments

How Can I Influence NHTSA's Thinking on This Rule?

In developing this proposed rule, we tried to address the anticipated concerns of all our stakeholders. Your comments will help us. We invite you to provide different views on it, new approaches we have not considered, new data, how this rule may affect you, or other relevant information. Your comments

will be most effective if you follow the suggestions below:

Explain your views and reasoning as clearly as possible.

- Provide solid information to support your views.
- If you estimate potential numbers or reports or costs, explain how you arrived at the estimate.
- Tell us which parts of the rule you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the rule, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel (NCC–30), NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People and Other Materials Relevant to This Rulemaking?

You may view the materials in the docket for this rulemaking on the Internet. These materials include the written comments submitted by other interested persons and the preliminary regulatory evaluation prepared by this agency. You may read them at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments and materials on the Internet. To read them on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2000–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the materials in the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Parts 573 and 577

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Parts 573 and 577 as set forth below.

PART 57B—DEFECT AND NONCOMPLIANCE REPORTS

1. The authority citation for Part 573 of Title 49, CFR, continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegations of authority at 49 CFR 1.50; 501.2.

2. Part 573 is amended, by adding § 573.14 to read as follows:

* * * * *

§ 573.14 Accelerated remedy program

(a) An accelerated remedy program is one in which the manufacturer expands the sources of replacement parts needed to remedy the defect or noncompliance, or expands the number of authorized repair facilities beyond those facilities that usually and customarily provide remedy work for the manufacturer, or both.

(b) The Administrator may require a manufacturer to accelerate its remedy program if:

(1) The Administrator finds that there is a risk of serious injury or death if the remedy program is not accelerated;

(2) The Administrator finds that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both; and

(3) The Administrator determines that the manufacturer's remedy program is not likely to be capable of completion within a reasonable time.

(c) The Administrator, in deciding whether to require the manufacturer to accelerate a remedy program and what to require the manufacturer to do, may consider a wide range of information, including, but not limited to, the following: the manufacturer's initial or revised report submitted under § 573.5(c), information from the manufacturer, information from other manufacturers and suppliers, information from any source related to the availability and implementation of the remedy, and the seriousness of the

risk of injury or death associated with the defect or noncompliance.

(d) As required by the Administrator, an accelerated remedy program shall include the manner of acceleration (the expansion of the sources of replacement parts, expansion of the number of authorized repair facilities, or both), may identify the parts to be provided and/or the sources of those parts, may require the manufacturer to notify the agency and owners about any differences among different sources or brands of parts, may require the manufacturer to identify additional authorized repair facilities, and may specify additional owner notifications related to the program. The Administrator may also require the manufacturer to include a program to provide reimbursement to owners who incur costs to obtain the recall remedy from sources that are not reimbursed by the manufacturer.

(e) Under an accelerated remedy program, the remedy that is provided shall be equivalent to the remedy that would have been provided if the program had not been accelerated. The replacement parts used to remedy the defect or noncompliance shall be reasonably equivalent to those that would have been used if the remedy program were not accelerated. The service procedures shall be reasonably equivalent. In the case of tires, the replacement tire shall be the same size and type as the defective or noncompliant tire, shall be suitable for use on the owner's vehicle, and for passenger car tires, shall have the same or better rating in each of the three categories enumerated in the Uniform Tire Quality Grading System. See 49 CFR 575.104. For child restraint systems, any replacement shall be of the same type and the same overall quality.

(f) In those instances where the accelerated remedy program provides that an owner may obtain the remedy from a source other than the manufacturer or its dealers or authorized facilities by paying for the remedy and/or its installation, the manufacturer shall reimburse the owner for the cost of obtaining the remedy as specified in paragraphs (b)(1) through (3) of this section. Under these circumstances, the accelerated remedy program shall include, to the extent required by the Administrator:

(1) A description of the remedy and costs that are eligible for reimbursement, including identifying the equipment and/or parts and labor for which reimbursement is available;

(2) Identification, with specificity or as a class, of the alternative repair facilities at which reimbursable repairs may be performed, including an explanation of how to arrange for service at those facilities; and

(3) Other provisions assuring appropriate reimbursement that are consistent with those set forth in § 573.13, including but not limited to provisions regarding the procedures and needed documentation for making a claim for reimbursement, the amount of costs to be reimbursed, the office to which claims for reimbursement shall be submitted, the requirements on manufacturers for acting on claims for reimbursement, and the methods by which owners can obtain information about the program.

(g) In response to a manufacturer's request, the Administrator may authorize a manufacturer to terminate its accelerated remedy program if the Administrator concludes that the manufacturer can meet all future demands for the remedy through its own sources in a prompt manner. The manufacturer shall provide individual notice of the termination of the program to all owners of unremedied vehicles and equipment at least 30 days in advance of the termination date in a form approved by the Administrator.

(h) Each manufacturer shall implement any accelerated remedy program required by the Administrator according to its terms.

* * * * *

3. Part 577 is amended by adding § 577.12 to read as follows:

§ 577.12 Notification pursuant to an accelerated remedy program.

(a) When the Administrator requires a manufacturer to accelerate its remedy program under § 573.12 of this chapter, in addition to complying with other sections of this part, the manufacturer shall provide notification in accordance with this section.

(b) Except as provided elsewhere in this section, or when the Administrator determines otherwise, the notification under this section shall be sent to the same recipients as provided by § 577.7. If no notification has been provided to owners pursuant to this part, the provisions required by this section may be combined with the notification under §§ 577.5 or 577.6. A manufacturer need only provide a notification under this section to owners of vehicles or items of equipment for which the defect or noncompliance has not been remedied.

(c) The manufacturer's notification shall include the following:

(1) If there was a prior notification, a statement that identifies it and states that this notification supplements it.

(2) A statement that the National Highway Traffic Safety Administration has required the manufacturer to accelerate its remedy program and a statement of how it has been expanded (e.g., by expanding the sources of replacement parts and/or expanding the number of authorized repair facilities).

(3) In the case of an accelerated remedy program involving repair through service facilities other than those owned or franchised by the manufacturer or through the manufacturer's authorized dealers, a statement that the owner may elect to obtain the remedy using designated service facilities other than those that are owned or franchised by the manufacturer or are the manufacturer's authorized dealers.

(4) In the case of an accelerated remedy program involving replacement of parts or equipment from sources other than the manufacturer, a statement that the owner may elect to obtain the remedy using replacement parts or equipment from specified sources other than the manufacturer.

(5) The following statements and information shall be included insofar as they are applicable:

(i) A statement indicating whether the owner will be required to pay the alternative facility and/or parts supplier, as may be applicable, subject to reimbursement by the manufacturer;

(ii) Identification of alternative service facilities where the owner may have repairs performed;

(iii) An explanation of how to arrange for service at alternative service facilities; and/or

(iv) Identification of alternative replacement parts that may be utilized.

(6) If applicable, the manufacturer's notification shall include the following language, with the blanks filled in appropriately: ''If you elect to obtain the remedy [at a service facility other than the [manufacturer's], one of its dealers or another authorized facility] [and/or] [using sources of replacement parts or equipment other than [the manufacturer's]] and you pay for [that service] [or] [those parts], you will be eligible to be reimbursed for your expenditures. To see what costs are eligible for reimbursement and what procedures apply, you can review or obtain [manufacturer's] accelerated remedy program at [the specific Internet URL for the program], by calling [manufacturer] at [the manufacturer's toll-free telephone number], or by writing to [manufacturer] at [address].

Issued on: December 5, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–30488 Filed 12–10–01; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.J. Res. 76/P.L. 107–79

Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Dec. 7, 2001; 115 Stat. 809)

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